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SUPREME COURT OF THE UNITED STATES.

No. ~~207.~~ 127.

MARIA TEODORA PERALTA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FOR THE PLACE NAMED BUACOCHA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

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1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twenty-eighth day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Maria Teodora Peralta, for the place named "Buacocha," was presented, and ordered to be filed and docketed with No. 648, and is as follows, to wit:

Vide page 5 of this transcript.

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *August* 29, 1853.

In case No. 648, Maria Teodora Peralta, for the place named "Buococha," the deposition of Manuel Castro, a witness on behalf of the claimant, taken before Commissioner Thompson Campbell, with document marked A,
2 Thompson Campbell, annexed thereto, was filed.

Vide page 11 of this transcript.

In the same case the deposition of H. W. Halleck, a witness in behalf of the United States, taken before Commissioner Thompson Campbell, in continuation of the deposition of Manuel Castro, was filed.

Vide page 27 of this transcript.

SAN FRANCISCO, *Aug.* 31, 1853.

In the same case the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

Vide page 12 of this transcript.

SAN FRANCISCO, *June* 7, 1854.

Case No. 648 was ordered to be placed at the foot of the 1st class cases on the trial docket.

SAN FRANCISCO, *August* 17, 1854.

In the same case the counsel for the claimant presented the following affidavit, to wit.

Vide page 32 of this transcript.

Which, having been considered the continuance was granted, and upon motion of the counsel the said case was ordered to be placed at the
3 foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *October* 17, 1854.

Case No. 648, with the consent of the U. S. law agent, was ordered to be placed at the foot of the 4th class cases on the trial docket.

SAN FRANCISCO, *Oct.* 17, 1854.

In the same case the counsel for the claimant filed the following affidavit, to wit.

Vide page 33 of this transcript.

Whereupon, on motion, it is ordered that the case be continued.

SAN FRANCISCO, *November* 9, 1854.

In the same case the depositions of Juan Foster and J. J. Warner, witnesses on behalf of the claimant, taken before Commissioner Peter Lott, were filed.

Vide pages 14 and 15 of this transcript.

SAN FRANCISCO, *December* 22*d*, 1854.

In the same case the deposition of Ignacio Pacheco, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

Vide page 17 of this transcript.

SAN FRANCISCO, *January* 23*rd*, 1855.

In the same case the counsel for the claimant filed the following papers, to wit:

1st. The affidavit of Maria Bernardo Duarte de Valencia.

Vide page 29 of this transcript.

2nd. The petition of claimant's heirs by way of amendment of the original petition.

Vide page 7 of this transcript.

3d. The following motion, to wit.

Vide page 31 of this transcript.

SAN FRANCISCO, *Jan'y* 29, 1855.

In the same case the deposition of Manuel Castro, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

Vide page 19 of this transcript.

SAN FRANCISCO, *Jan'y* 30, 1855.

Case No. 648 was submitted on briefs and taken under advisement by the board.

SAN FRANCISCO, *February* 17, 1855.

In the same case Commissioner Alpheus Felch delivered the decision of the board upon the motion of the counsel heretofore filed, to wit, on the 23rd January last, granting the same.

Whereupon, it was ordered that the petition of the claimant's heirs, by way of amendment, be admitted on the record in this case.

SAN FRANCISCO, *Ap'l* 3*d*, 1855.

In the same case Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

Vide page 35 of this transcript.

And the following order was made, to wit.

Vide page 37 of this transcript.

Petition.

To the U. S. land commissioners for the ascertaining and settling private land claims in California:

The petition of Maria Teodora Peralta respectfully showeth unto your honorable body that on the 8th day of November, 1845, she made and presented her petition in writing to the government, soliciting for herself the grant of the tract of land known as "Buococha," and that such petition was referred to the sub-prefect for a report thereon.

That upon his report, and upon the report of many adjoining landholders and magistrates, being in favor of your petitioner, Pio Pico, by virtue of
6 his authority as constitutional governor of California, declared your petitioner the lawful owner of said land, on the 18th of February, 1846, and ordered the proper document to be executed.

That such title never issued in consequence of the occupancy of California by the Americans, and the abolishment of the Mexican authorities.

And your petitioner further saith that all the original papers, as petitions, references and reports, and decree for the issuing of the grant, are in her possession; and will be filed, together with this petition, for the inspection of your hon. board.

That said land is situated in the present county of Marin, is known by the name of Buococha, contains two and one half square leagues, and is bounded by the ranchos of Fernando Feliz, Juan Moranda, Bartolo Bojorguez and Camilo.

That your petitioner has been in the quiet and peaceable possession of said land from the year 1845, has always exercised full and undisputed ownership over the same, and is not aware of the existence of any
7 title conflicting with or superior to her own.

She therefore claims to be the lawful owner thereof, and prays that your honorable body will confirm her claim and title thereto.

CLARKE, TAYLOR & BECKH,
Att'ys for D'na Paralta.

Filed in office Feb'y 28, 1853. GEO. FISHER, *Sec'y.*

Recorded in vol. 2 of petitions, on pages 18, 19
GEO. FISHER, *Sec'y.*

Petition of heirs of Teodora Peralta

U. S. land commission, case No. 648, for the place called Buococha.

To the honorable the board of U. S. land commissioners for settling private land claims in the State of California :

The petition of Maria Bernardo Duarte de Valencia, for herself and co heirs hereinafter named, respectfully shows, by way of amendment of the original petition, filed in the said case No. 648, on February twenty
8 eighth, A. D. eighteen hundred and fifty-three, as follows, to wit :

That the petitioner is the legitimate daughter of Teodora Peralta in the said original petition named as claimant of the said place or land called Buococha.

That the said Teodora Peralta died intestate during the month of November, A. D. 1850, and that Mariano Duarte, the husband of said Teodora Peralta, and the father of this petitioner, died intestate during the year eighteen hundred and forty-seven.

That the heirs of the said Teodora Peralta are as follows, to wit : Ascension, Jose, Maria Bernardo, (this deponent,) Dolores Josefa, Alvino, and Loreto, being legitimate sons and daughters of the said Teodora, and Guadalupe and Nicolas Bernal, who are of age, and Maria Antonio Pacheco, and Jose Ramon Pacheco, who are minors, legitimate grandchildren of the said Teodora.

That there are no heirs of the said Mariano Duarte save those hereinbefore named as heirs of the said Teodora Peralta.

That the said land or place called Buococha is bounded, described, and situated as is set forth in the petition filed as aforesaid, in the name of
9 the same Teodora Peralta, and on the espediente heretofore filed in this cause, and that after and since the granting thereof hereinafter

referred to, the same has been occupied and possessed by the said Teodora till the time of her death, and thereafter up to the present time by her heirs.

That in consequence, as the petitioner verily believes, of misapprehension and mistake on the part of those who were instrumental in filing the said petition, confirmation of title is therein prayed for in the name of Teodora Peralta, heretofore deceased.

That as appears by the said original petition, and in consequence, as the petitioner verily believes, of like misapprehension and mistake, it is therein alleged that on the 18th day of February, A. D. eighteen hundred and forty-six, Pio Pico, by virtue of his authority as constitutional governor of California, declared the said Teodora Peralta the lawful owner of said land, and ordered the proper documents to be executed, and that such title never issued in consequence of the occupancy of California by the Americans, and the establishment of the Mexican authorities.

10 And this petition shows, by way of amendment and correction thereof, that, as she is informed and verily believes, such title did in fact issue, to wit: a written document of concession signed by the said Pio Pico, as governor as aforesaid, granting the said land called Buococha to the said Teodora Peralta, in obedience to the written order for the extending of said title, given and signed by the said governor on the 18th day of February, one thousand eight hundred and forty-six, which order is contained in the espediente heretofore filed in this case.

That, as the petitioner is informed and verily believes, the said document of concession, and also a map of the said land, and a certificate of possession thereof, were delivered to the said Teodora Peralta, at the time of the said granting of said land, and within the knowledge and distinct recollection of this petitioner, were held and possessed by the said Teodora Peralta during her lifetime, that until within a short period the petitioner and, as she is informed and verily believes, the rest of said heirs have believed the same to be on file along with the said espediente in this cause; that the petitioner has made and caused to be made diligent search therefor

11 without finding the same, and she verily believes that the same have become lost or destroyed since the death of the said Teodora Peralta, as is stated in the affidavit of the petition heretofore filed in this cause.

And the petitioner prays for confirmation of the said title to said land or place called Buococha, to and in favor of herself of the said other heirs of the said deceased Teodora Peralta, and that this petition be taken together with and in amendment and connection of the said claim and petition heretofore filed in this case in the name of the said Teodora Peralta.

ROBERT SIMPSON,
Attorney for petitioner and her co-heirs.

Filed in office Jan. 23, 1853.

GEO. FISHER, *Sec'y.*

12 *Dep. of Manuel Castro.*

OFFICE OF COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA,
San Francisco, Aug. 29, '53.

This day, before Com'r Thompson Campbell, Manuel Castro, a witness in behalf of claimant Maria Teodora Peralta, No. 648, who, after being duly sworn, deposed as follows:

What is your name, age, and place of residence?

Manuel Castro is my name, my age is thirty-one years, and my place of residence is in Lower California.

Look on the paper now shown you and marked A, which purports to be a petition by the claimant, and a decree of cession by Pio Pico. State what you know in relation to the genuineness of said document and the signatures thereto.

I know said document; I have had it before in my hands, and recognize it as a genuine document; also the signature of Jose Duarto, Ygnacio Pacheco, Fernando Feliz, Limotlo Murphy, Sponasio Guerro Pico, Manuel Castro, which is my own signature, as genuine, wherever they occur on said document. I have seen them all write frequently, and am well
13 acquainted with their signatures.

State what you know in regard to the possession, occupation, and improvement of the land by the claimant.

About the latter port of the year 1845 I passed through Yerba Buena to Sonoma, way the way of the said rancho going and coming, where I stoped a part of the day, and there I found the present claimant with her family of children and servants living in a house; they cultivated the ground, and had some cattle on that occasion. I saw some three hundred head of cattle on the ranch, some twenty or thirty horses, and there were corrals on the place. The Pico referred to was Pio Pico's signature, and I signed the document as prefect of the second district in California.

Questions by the law agent.

Have you seen the document which you signed as prefect until the present time?

After I sent the document to the governor I have not seen it until now.

14 In whose handwriting is the body of the document signed by Pico?

I believe it is in the handwriting of Governor Pico.

Where was governor in February, 1846, the time when this document bears date?

I was in Monterey, and I understood Governor Pico was in Los Angeles.

MAN'L CASTRO.

Sworn and subscribed before me this 29th day of August, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Aug. 29, 1853.

GEORGE FISHER, *Sec'y.*

Recorded in Ev. B., vol. 3, p. 97.

GEO. FISHER, *Sec'y.*

Dep. of W. A. Richardson.

OFFICE OF THE COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA,
San Francisco, Aug. 30, 1853.

This day, before Commissioner Alpheus Felch, came William A. Richardson, a witness in behalf of the claimant Maria Teodora Peralta, case No. 648, who after being duly sworn deposed as follows:

15 *Questions by Mr. Clark, att'y for claimant.*

1 question. What are your name, age, and place of residence?

Answer. My name is William A. Richardson, my age fifty-eight years, and I reside at Sanselito, in the Marin County, and State of California. I have lived thirty-one years in California.

2nd question. Look on the document now here presented to you, marked

"A, Thompson Campbell," filed in this case, and annexed to the deposition of Manuel Castro taken therein, and state what you know in regard to the genuineness of said document and the signatures thereto.

Answer. The document is genuine. The signatures of Jose Duarte, Ignacio Pacheco, Timoteo Murphy, Fernando Feliz, and Manuel Castro, who was prefect of the district, Francisco Guerrero, and Pico are genuine. The latter is the signature of Pio Pico, former governor of California. I have often seen each of them write and had correspondence with them.

16 Timoteo Murphy was justice of the peace, and administrator of the mission of San Rafael, in Marin County; he has been dead about eight months.

3d question. State what you know in regard to the occupation and improvement of the rancho known by the name "Buancocha."

Answer. I know the rancho well. It was occupied by Maria Teodora Peralta during her lifetime, that is from the year 1844 until her death, about two years ago. She had a house on it, which was built for her by her son, Jose Duarte, in 1844, in which she lived. They had cattle on the rancho, and cultivated a large part of it.

Questions by Mr. ——— on the part of the United States.

1 question. Was there any house built on the rancho after that mentioned in your last answer?

Answer. Not any dwelling-house.

2 question. About how much land was there under cultivation?

17 Answer. About fifty acres.

WILL'M A. RICHARDSON.

Subscribed and sworn to before me, at San Francisco, this thirteenth day of August, A. D. 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office Aug. 31, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 3, p. 109.

GEO. FISHER, *Sec'y.*

Dep. of Jno. Foster.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *November* 8, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, John Forster, a witness on behalf of claimant, Maria Teodora Peralta, in case No. 648 of the docket of said board, and said witness, being duly sworn, deposed as follows.

The U. S. law agent is present.

Questions by counsel for claimant.

18 1st question. What is your name, age, and place of residence?

Answer. My name is John Forster; my age, 39 years; my residence in the county of Los Angeles, California.

2nd question. How long have you been a resident of California?

Answer. I have been a resident of California twenty years.

3d question. How long have you been acquainted with Pio Pico, former governor of California? and what have been your relations, if any, with him?

1869

Answer. I have known Pio Pico for the past twenty years. I am connected by marriage with his family; he is my brother-in-law, and had frequent and continued correspondence with him since 1839. I have also held a situation under him.

4th question. Are you acquainted with his signature and writing?

Answer. I am. I have frequently seen him write.

5th question. Look upon the document now shown you, marked
19 P. L., and filed in this office Feb. 28, 1853, and say if the signature and rubric of Pio Pico on the 4th and last written folio of said document is his true and genuine signatnre.

Answer. The signature is the true and genuine signature of the said Pio Pico, as is also the rubric; the body of the order, in the Spanish language, preceding, and to which the signature is affixed, is also in the handwriting of the said Pico.

6th question. Do you know in what capacity or office the said Pio Pico was acting at the time specified in the aforementioned order, viz: Feb. 18, 1846.

Answer. At the date mentioned he was governor of the department of California.

Questions by associate law agent.

1 question. Was not his general signature written in a bolder hand and more distinctly than that now shown you?

Answer. His handwriting was not perfectly uniform, but always such as to be recognized; at times he was nervous.

JOHN FORSTER.

20 Subscribed and sworn to before me on this 9th day of November, A. D. 1854.

PETER LOTT, *Commissioner, &c.*

Filed in office Nov. 9, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol 11, p. 96.

GEO. FISHER, *Sec'y.*

Dep. of J. J. Warner.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISO, *Nov.* 8, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, J. J. Warner, a witness on behalf of claimant, Maria Teodora Peralta, in case No. 648 on the docket of said board, and said witness, being duly sworn, deposed as follows.

The U. S. law agent is present.

Questions by claimant's counsel.

1st question. What is your name, age, and place of residence?

Answer. My name is J. J. Warner; my age, 46 years; my resi-
21 dence, San Diego and the adjoining county of Los Angelos for more than twenty years.

2nd question. Are you acquainted with the signature of Pio Pico, former governor of California? if yea, how long have you been acquainted with the same?

Answer. I am acquainted with the signature of the said Pico, having frequently seen him write during the past twenty years in which I have been acquainted with him.

3rd question. Look on the document now shown you, marked P. L., and exhibited in the deposition of John Forster this day, and say if the signature of Pio Pico on the fourth and last written folio of said document is his true and genuine signature and rubric?

Answer. I have no doubt of the signature and rubric being the true and genuine signatures of the said Pico, the document preceding and to which the signature is affixed, being an order in the Spanish language, is also in the handwriting of the said Pico.

Questions by the associate law agent.

1st question. Are you intimate with Pio Pico, whose signature you
22 have examined? if yea, what are your relations with him?

Answer. My acquaintance with the said Pico was at first arising from commercial transactions with him about 1836. I became intimately acquainted with his family, and have so continued up to this time. The relation between us is that of friendship, and one growing out of the ordinances of the Roman Catholic Church.

J. J. WARNER.

Subscribed and sworn to before me on this 8th day of November, A. D. 1854.

PETER LOTT, *Comm'r, &c.*

Filed in office Nov. 9, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 5, p. 616.

GEO. FISHER, *Sec'y.*

23 *Dep. of Ignacio Pacheco.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Dec.* 20, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Ignacio Pacheco, a witness in behalf of the claimant, Maria Teodora Peralta, in case No. 648 on the docket of said board, and said witness, being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows.

The U. S. associate law agent is present.

Questions by claimant's counsel.

1st question. What are your name, age, and place of residence?

Answer. My name is Ignacio Pacheco; my age, forty-eight years; and my residence is in the county of Marin, State of California, at my rancho, called San Jose.

2d question. What office, if any, have you filled in California under the Mexican government, and during what years did you fill the same?

24 Answer. From the year 1826 until about the year 1846 I was second alcalde of San Rafael, Timoteo Murphy being first alcalde of the same place.

3d question. Do you know the land or place called Buococha? If yea, state where the same is situated and describe the same.

Answer. I know the land well; it is situated in Marin County, near my own rancho, and is bounded by the rancho of Bartolo Bojorquez, Juan Martin, Fernando Feliz, Juan Miranda, and the Indian Camilo.

4th question. Look upon the document marked "A" and P. L. in the depo-

sition of John Foster, Nov., 1854, and state what you know of the genuineness of the signatures therein appearing.

Answer. I am well acquainted with the signature of Bartolo Bojorquez, Juan Martin, Fernando Feliz, Camilo, and Timoteo Murphy, on the 2d page of said document, and of Jose Duarte, upon the first page thereof. I saw the said signature written in my presence when I myself signed my name upon the said second page; also the name of Timoteo Murphy on the
25 3d page is the true signature of said Murphy. The signatures of Francisco Guerrero, upon the seventh page, are also genuine; also those of Manuel Castro, who was prefect at the time of the dates mentioned in said document, are genuine; also the signature of Pico—I mean Pio Pico, former governor of California—on the eighth page, I recognize to be genuine. I know their handwriting well, and all those whose signatures appear in the said document I have seen write, and those whose crosses are affixed on said document I saw affix the same.

5th question. In whose hand is the body of the writing which appears on the 1st, 2d, 5th, and 6th pages of said document?

Answer. In the handwriting of Antonio Ma. Osio, who now lives in Lower California. The signature of Maria Teodora Peralta upon the sixth page I know to have been signed by said Antonio Ma. Osio for the said Maria Teodora Peralta, at her request, made in my presence, that he should sign the same for her. Jose Duarte, whose name appears on the first page, is the son of the said Teodora Peralta. Osio wrote the same at my order, and
26 at her request. I know the handwriting well.

6th question. State what you know of the occupation and cultivation of said land by the grantee thereof, Teodora Peralta, and her heirs.

Answer. Maria Teodora Peralta lived with her family upon the said land from about the year 1843 or 1844 until her death, about 3 years ago. He died of cholera, and her heirs have occupied it since her death till the present time. A house was upon the land, and occupied by the said Teodora and her family in 1843 or 1844, and ever since a house has been there. The family cultivated a part of it, and had cattle and horses upon the land ever since their said occupation thereof.

7th question. State, if you know, by whom possession was given of the said land to the Ma. Teodora Peralta.

Answer. I myself gave possession of the same to the said Maria Teodora Peralta, in my official capacity as second alcalde at the time of the granting thereof.

27 *Cross-examined by U. S. associate law agent.*

1st question. Who built the house on said land of which you have spoken? and when was it built?

Answer. Albino, the son of Teodora Peralta, built it for his mother, and it was built in 1845.

YGNACIO PACHECO.

Subscribed and sworn to before me on this 20th day of December, 1854.
PETER LOTT, *Commissioner.*

Filed in office Dec. 22d, 1854.
GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 97.
GEO. FISHER, *Sec'y.*

Dep. of Manuel Castro.

OFFICE OF THE COMMISSIONER OF LAND CLAIMS IN CALIFORNIA.

On this twenty-seventh day of January, A. D. 1855, before me, Peter Lott, commissioner for taking testimony to be used before the board of said commissioners, appeared Manuel Castro, a witness on behalf of the claimant in said case No. 648, and the said witness, being by me duly sworn, deposed as follows:

28 Question 1st. Do you know anything of the issuing of a title or document of concession of the land called Buococha in favor of Teodora Peralta by the government of California while under Mexican rule? If yea, state what you know thereof; when and whence the same was issued.

Answer. All that I know is that in the latter part of the year 1845 Teodora Peralta desired me to obtain from the government a formal concession to her of the said land. I applied to the government therefor on her behalf, and forwarded to the government the application therefor, and also the papers contained in the espediente marked "A, Thompson Campbell," referred to in my former deposition in the case. I sent the document from Monterey to the government at Los Angeles, about the beginning of January, 1846. After sending the documents to the government I visited Los Angeles on public business. While there I made enquiry at the office of the secretary of the government respecting the said concession, and learned that the title had been issued, and despatched to the interested party during April,

29 1846.

Question 2d. Who was secretary at that time? and where is he now?

Answer. Matias Moreno was secretary then. He is now in Mexico.

MANUEL CASTRO.

Subscribed and sworn to before me on this 27th day of January, A. D. 1855.

PETER LOTT, *Commissioner.*

Filed in office Jan. 29, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 292.

GEO. FISHER, *Sec'y.*

Espediente.

Sor. juez de paz:

M'a Teodora Peralta, ante V. con el debido respeto se presenta y dice que pretende solicitar del gobierno departamental el parage conocido con el nombre de Buancocha que se halla baldio entre los ranchos de los S'res Bartolo Bojorques, Fermando Felis, Juan Miranda, y Camilo; y para acompanar a la representacion que devo hacer el Sor. Gobernador a S. E. suplico a V. S. el que pido informe a los s'res mencionados y que digan si les pertenece y si se puede adjudicar a la persona que lo solicite.

Juro D. S'n Rafael, Junio 26 de 1845.

30 A ruego de mi madre M'a Teodora Peralta, por no saber firmar.

JOSE DUARTE.

En el mismo dia de la f'ha que antecede ante mi Ignacio Pacheco, juez de paz, emplente de la jurisdiccion de este pueblo, dijeron los S'res Bartolo Bojorques, Fernando Felis, Juan Miranda y Camilo y para acompanar a la representacion que debo hacer el Sor. Gobernador a V. E. suplico a V. el que

pido informar a los s'res mencionados y que degan si les pertenece y si se puede adjudicar a la persona que lo solicite.

Juro, &c. S'n Rafael, Junio 26 de 1845.

A ruego de mi madre M'a Teodoro Peralta, por no saber firmar.

JOSE DUARTE.

En el mismo dia de la f'ha que antecede, ante mi Ignacio Pacheco, juez de paz, emplente de la jurisdiccion de este pueblo dijeron los S'res Bartolo Bojorques, Fernando Felis, Juan Miranda, Juan Martin, y Camilo, que el parage que pretende Da. Teodora Peralta lore cosen por valdio y que puede solicitarlo con toda la estension que tengas pues no llegara a dos
31 sitios de ganado mayor en la inteligencia de no perjudicar ni pretender despues mas terreno que el sobrante que quede despues de la medicion y posesion de sus terrenos. Y para constancia firmaron conmigo los que supieron y los que no firmaron una senal de cruz.

IGNACIO PACHECO.

CAMILO.
BARTOLO BOJORQUES.
JUAN MARTIN.
TIMOTEO MURPHY.
FERNANDO FELIS.

Timoteo Murphy, juez constitucional del pueblo de San Rafael. Certifico q. el parage concedido con el nombre de Buacocha, hasta hoy los reconocido p'r valdio y de consiguiente puede adjudicarse la persona que lo necesita en la inteligencia de no perjudicar en su terreno a los colindantes correspond'te solicitante.

M'A TEODORA PERALTA.

Doy este en el pueblo de San Rafael, Nov're 29 de 1845.

TIMOTEO MURPHY.

Sor. prefecto de este distrito:

M'a Teodora Peralta, natural de este departam'to y becino del pue-
32 blo de San Rafael, ante V. S. con el mas sumiso respeto en derecho digo: Que desde el mes de Junio del presente ano solicite provicionalm'te la juez de este punto el parage conocido con el nombre de Buacocha que se halla baldio colindante con los Senores Fernando Felis, Juan Miranda, Bartolo Bojorques y Camilo, segun demuestra el adjunto docum'to que debidam'te acompano a V. S. por el que vera que los colindantes ya dieron su informe juntam'te con el juez respectivo por lo que suplico a V. S. se digne mandar tomar los que V. S. crea mas conveniente.

P. T. a V. S'a rendidam'te pido y suplico proveer como llebo pedido de lo que espero recibir gracia y merced de lo que juro lo necesario, &c. Dispensando el uso del papel comun por no haber en este lugar del sellado correspond'te.

San Rafael, Noviembre 8 de 1845.

M'A TEODORA PERALTA.

YERBA BUENA, *Noviembre* 20 *de* 1845.

Informe el sub-prefecto de este partido lo que crea conveniente.

CASTRO.

Otro si el terreno se compone de dos sitios de y medio segun esplica el diseno respectivo.

YERBA BUENA, *N'bre* 26 *de* 1845.

En vista del decreto que antesede informe el juez j'o de S. Rafael
33 si la solicitante obtiene los requisitos que prebiene la ley y si el documento q. incorpora con su representasion es legal y todo lo cree conbeniente.

FRAN'CO GUERRERO.

YERBA BUENA, *D'bre* 14 *de* 1845.

S. prefecto:

En vista del informe queda el juez de S. Rafael y siendo lo interesado casado y hallandose ausente sin marido V. S. en uso de su determinacion, y en vista del documento que presente, puede desde el jiro que estime de justicia.

F'CO GUERRERO.

Ex'mo sor. gob'or:

En vista de los informes que anteseden y siendo la interesado hijo del pais y cargado de familia aunque se halla su marido ausente la prefectura no dificultad en que se le conceda la gracia que solicita pero V. E. lo resolvera como lo juzque justo y a certado.

Monterey, D'bre 20 de 1845.

MAN'L CASTRO.

ANGELES, *F'b'ro* 18 *de* 1846.

Estiendose le el titulo que se le asegure la pro piedad al interesado.

PICO.

Filed in office Feb'y 28, 1853.

GEO. FISHER, *Sec'y.*

34 *Translation of espediente.*

Sir justice of the peace:

Ma. Teodora Peralta, with due respect, presents herself before you and says: That intending to solicit from the government departmental the location known by the name of Buancocha, which is in a vacant state, and situated between the ranchos of Bartolo Bojorquez, Fernando Feliz, Juan Miranda, and Camilo, and to accompany the representation I must make to his excellency the governor, I pray you that you will demand a report from the mentioned gentlemen, and that they will say whether it belongs to them, and if it can be adjudicated to the person soliciting it. I answer, &c.

San Rafael, June 26th, 1845.

On request of my mother, Ma. Teodora Peralta, who does not understand to sign.

JOSE DUARTE.

On the same day as the foregoing, before me, Ignacio Pacheco, copulative justice of the peace of the jurisdiction of this pueblo, Bartolo Bojorquez, Fernando Feliz, Juan Miranda, and Camilo, stated that the location
35 solicited by Da. Teodora Peralta, is known to be vacant, and that she can solicit it, in its whole extent, for it will scarcely amount to two square leagues, in the understanding not to injure or after claim more land than the surplus which after the mensuration and possession of her lands

1875

may remain. And in attestation, they signed with me, namely: those who knew how, and those who did not made a sign of the cross.

IGNACIO PACHECO.
CAMILO ⋈.
BARTOLO BOJORQUEZ ⋈.
JOSE MARTIN ⋈.
FERNANDO FELIZ.
TIMOTEO MURPHY.

Sir prefect of this district:

I, Ma. Teodora Peralta, a native of this department and resident of the pueblo of San Rafael, with the utmost respect, according to law, say before you, that since the month of June, this year, I provisionally solicited the justice of this place for the location known by the name of Buacocha, which is in a vacant state, and bordering on Fernando Feliz, Juan Miranda, Bartolo Bojorquez, and Camilo, as shown in the adjoined document I hereby duly accompany to you, by which you will see that the bordering landowners already have given their report jointly with the respective justice;
36 wherefore I pray you to be pleased to take those which you may think expedient.

Therefore, I humbly ask and pray you to provide as I have requested, whereby I expect to receive favor and mercy; and to which I make the necessary oath, while you will be pleased to dispense the use of common paper, as there is no corresponding stamped paper to be had in this place.

San Rafael, Nov. 8th, 1845.

MA. TEODORA PERALTA.

Postcriptum.—The land consists of two leagues and a half square, as explained in the respective sketch.

YERBA BUENA, 26*th Nov.*, 1845.

In view of the foregoing first claim the 1st justice of San Rafael will report whether the petitioner is possessed of the qualifications provided by law, and whether the document he incorporates with his representation is legal, and to state all he may think expedient.

FRAN'CO GUERRERO.

Yerba Buena, Dec. 14th, 1848.

SAN RAFAEL.

In view of the reports given by the justice of San Rafael, and the interested party being married, and her husband being absent, your honor,
37 by a resolution of yours, and in virtue of the document presented, can give it the conclusion you may deem just.

FRAN'CO GUERRERO.

Excellent sir governor:

In view of the foregoing reports, and the interested party being a daughter of the country, and burdened with a family, though her husband is absent, the prefecture don't find any difficulty towards granting her the favor she solicits, but your excellency will resolve as you shall deem just and fit.

Monterey, Dec. 20th, 1845.

MANUEL CASTRO.

ANGELES, *Feb'y* 18*th*, 1846.

Let the title deed to secure the ownership to the interested party be issued.

PICO.

Filed in office Oct. 1st, 1853.

GEO. FISHER, *Sec'y.*

38 *Dep. of H. W. Halleck in continuation of Manuel Castro's depo. of Aug. 29th,* 1853.

Law agent calls H. W. Halleck on the part of the government in the foregoing case:

Were you formerly keeper of the records in California, and are you acquainted with the handwriting of Pio Pico, formerly governor of this State?

I was keeper of said records, and am acquainted with his handwriting.

State whether the signature to document A, in case No. 148, is the genuine signature of Pio Pico, and state your means of knowing his handwriting.

I have seen him write his name, and have had correspondence with him. This signature does not look to me like his genuine signature. He writes his name in different ways, and his signature, at different times, differ very much in appearance. I have compared his different signatures in his presence, and he told me they were genuine, all of them, although they differed very much from each other. This seems to have been written with a very bad pen, and although differing from his ordinary signature, it may nevertheless be genuine. His handwriting differs more at different times than any other governor of California I have ever seen.

39 Whether the body of the document signed by Pio Pico is in the handwriting with his signature?

I think it is.

Is not the handwriting much worse than the ordinary handwriting of Pio Pico?

I do not know that it is worse than his ordinary handwriting, but it does not look to me like his handwriting.

Questions by attorney for claimant.

On what occasions have you seen Pio Pico write, and when did the correspondence take place to which you have referred?

I saw him write his name on a number of occasions within a year, and had official correspondence with him in 1848.

Have you any means of knowing what the handwriting of Pio Pico was in 1846?

I have none, except seeing his signature on official documents in the archives and on title papers, some of which latter I have shown to him, and he told me they were his genuine signatures.

40 Was the opinion you have expressed based on the means of knowledge you have just stated?

It was.

H. W. HALLECK.

Sworn and subscribed the 29th day of August, A. D. 1853.

THOMPSON CAMPBELL, *Comm'r.*

Filed in office August 29, 1855.

(Signed) GEO. FISHER, *Sec'y.*

Affidavit of Ma. B. Duarte de Valencia for amendment.

U. S. land commission No. 648, for the place called Buococha.

Maria Bernardo Duarte de Valencia, being duly sworn, deposes and says that she is the legitimate daughter of Teodora Peralta, named as claimant in said cause No. 648; that the said Teodora died intestate, during the month of November, A. D. one thousand eight hundred and fifty, and that Mariano Duarte, her husband, died intestate during the year one

41 thousand eight hundred and forty-seven or forty-eight.

That the heirs of the said Teodora Peralta, deceased, as follows, to wit: Ascencion, Jose, Maria Bernardo, (this deponent,) Dolores Josefa, Alvino, and Loreto, being legitimate sons and daughters of the said Teodora and Guadalupe and Nicolas Bernal, who are of age, and Juan and Maria de los Reyes Bernal and Maria Antonio Pacheco, and Jose Ramon Pacheco, who are minors and legitimate grandchildren of the said Teodora.

That there are no heirs of the deceased Mariano Duarte, save those hereinbefore named as heirs of the said Teodora Peralta.

That the petition in this cause was filed in February 28th, 1853, through the instrumentality of persons who did not properly enquire into the facts involved in the case, and who prepared and filed the said petition without due consultation with and enquiry from such of the heirs of the said Teodora as were acquainted with said facts.

That, as appears by said petition, and as deponent verily believes, through mistake and misapprehension, the said petition prays for confirmation
42 of title in the name of the said Teodora Peralta, heretofore deceased, as claimant of the rancho or tract of land called Buococha, and through like mistake it is stated in said petition that on the eighteenth day of February, A. D. one thousand eight hundred and forty-six, Pio Pico, governor of California, declared the said Teodora to be the lawful owner of the said land, and ordered the proper document of title to be executed, but that such title never issued in consequence of the occupancy of California by the Americans and the abolishment of the Mexican authorities.

And this deponent is informed and verily believes that such title did in fact issue to and in favor of the said Teodora Peralta, to wit, a written document of concession, signed by the said Pio Pico, as such governor, granting the said rancho or land called Buococha to the said Teodora Peralta, in obedience to the written order for extending of said title given and signed by the governor on the 18th day of February, 1846, and contained in the espediente heretofore filed in this case.

That in the knowledge and recollection of the deponent, the said
43 document of concession, and also a map of the said land, and also a certificate of the giving possession thereof, were, together with the espediente, formerly in the possession of the said Teodora Peralta, and that only within a short period this deponent and, as she verily believes, the rest of the said heirs have been aware that the said document of concession, map, and certificate were not on file in said cause along with said espediente.

That this deponent, since being informed of the fact that the said papers are not on file in this cause, has made diligent but unsuccessful search for the same, and she verily believes that the same have become destroyed or mislaid since the death of deponent's mother, the said Teodora, by neglect or carelessness of the some of the said heirs who are persons unfamiliar with business affairs, of limited education, and not aware of the value and importance of such documents, and that, as the deponent verily believes, the same cannot be found and entirely lost.

And further deponent saith not.

her
MARIA BERNARDO × DUARTE DE VALENCIA.
mark.

Subscribed and sworn to before me on this 22d day of January,
44 A. D. 1855, the contents being made known to the witness in the Spanish language by interpreter to the board.

PETER LOTT, *Commissioner.*

Filed in office Jan. 23, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 11, p. 278.

GEO. FISHER, *Sec'y.*

Motion to amend petition.

U. S. land commission No. 648, for the place called Buococha.

In the said case No. 648, in behalf of Maria Bernardo Duarte de Valencia and the other heirs of Teodora Peralta, now deceased, named in the affidavit whereon this motion is based, it is now moved that leave be granted the said heirs to amend the petition and claim heretofore filed in said case by filing in amendment thereof an additional and supplementary petition in name and behalf of the said heirs and in accordance with the facts and statements in said affidavit set forth and contained, and praying for a confirma-
45 tion of title to said land or place called Buococha to and in favor of them, the said heirs, instead of to and in favor of the said deceased Teodora Peralta, named in said case as claimant of the said place or land. This motion is based upon the said affidavit sworn to by the said Maria Bernardo, heretofore filed in said case, and upon said additional or supplemental petition herewith presented to this honorable board.

ROBERT SIMPSON,
Att'y of petitioner Maria Bernarda D. de Valencia and her co-heirs.

Filed in office Jan'y 23d, 1855.

GEO. FISHER, *Sec'y.*

Affidavit of Robert Simson for continuance.

U. S. board of land commissioners, case 648.

Robert Simson, being duly sworn, deposes and says that he is in part owner of the rancho called Buococha, the claim whereto has heretofore been presented to said board for confirmation in said case No. 648. That, as deponent is informed and verily believes, certain documents relating to the title, grant, and possession of said rancho and necessary to the proof thereof
46 have heretofore been delivered to the attorney who presented the said claim as aforesaid. That the said attorney is now absent from the State of California and is expected shortly to return to said State. That at the instance of this deponent, diligent search for said documents has been made among the papers and in the office of said attorney, and this deponent is informed by the partners of the said attorney and verily believes that the said documents cannot be found and that it will be impossible to find the same until the said return of said attorney. That this deponent has fully examined the grounds on which confirmation of said claim is sought, and verily believes that the claimants in said cause cannot safely proceed to trial without the said documents being produced in evidence therein, and that the application based on this affidavit for a continuance of said cause and delay of trial thereof is made not solely for delay, but for purposes of justice.

ROBERT SIMSON.

Sworn before me this eighth day of August, A. D. 1854.
ALPHEUS FELCH, *Commissioner.*

47 Filed in office Aug. 17, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 5, p. 290.

GEO. FISHER, *Sec'y.*

Affidavit.

U. S. board of land commissioners, case 648.

Robert Simson, being duly sworn, deposes and says that he is part owner

of the rancho called Buococha, the claim whereto has heretofore been presented to said board in said case 648.

That said case has heretofore been continued upon affidavit of the deponent filed thereon. That the facts stated in said affidavit still exist and are true as stated in said affidavit, save that the attorney therein mentioned has lately returned to the State of California, but that sufficient time has not elapsed, as deponent is informed and believes, to search for and find the documents referred to in said affidavit and that the same has not yet been found.

That the application for further continuance based on this and said
48 preceding affidavit is made not solely for delay, but for purpose of justice.

ROBERT SIMSON.

Sworn before me this 17th day of October, A. D. 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office Oct. 17, 1854.

GEO. FISHER, *Sec'y.*

Recorded in journal, vol. 4, p. 73.

GEO. FISHER, *Sec'y.*

Opinion of the board by Com. S. B. Farwell.

MARIA TEODORA PERALTA
vs.
THE UNITED STATES. } Claim for a place called Buococha.

The petitioner in this case states in the first application for a confirmation that in November, '45, she presented her application for a grant to the proper prefect of the district for the land in question and that the same was referred to the sub-prefect for his report thereon, and that the reports of the said prefects were presented to Governor Pio Pico for his consideration and
49 action, and that the said governor, on the 18th day of February, 1846, entered the following order: "Let the title deed to secure the ownership to the interested party be issued;" and in consequence of the occupation of the country by Americans and the abandonment of the same by the Mexicans the said title was never issued.

On the 23d day of January, 1855, by leave of the commission, the affidavit of Maria Benardo Duarte, a daughter of the above-named claimant, was filed, setting forth that the petition was drawn up and filed through misapprehension of the facts in the case; and that a grant had been issued by Governor Pio Pico; and that the said grant, together with the proceedings in giving judicial possession, had either been lost or mislaid; and that at the time of filing the petition the said Maria Teodora was deceased, leaving the deponent and others named in said affidavit heirs of the estate of the said deceased; upon the presentation of which affidavit the counsel asked and obtained leave to amend the petition herein, to conform with the facts set forth in the affidavit.

The proofs in the case establish the fact of the decease of the above-
50 named petitioner, and that the persons named in the aforesaid affidavit are the heirs of the deceased; and that the espediente was presented to the prefect, as stated in the said petition first on file, and by him referred to the second prefect, and a report of the second prefect to the governor, and his order thereon, as stated in the petition, but there is no evidence that any grant was issued by the said governor, nor any satisfactory evidence that any juridical measurement was ever had, so as to enable this board to determine the locality and boundaries of the land, so as to enable

them to enter a decree of confirmation, provided a grant had been issued in due form. The proofs of occupancy and cultivation are satisfactory, and the motives and intentions of the petitioners doubtless good; and if they had used the proper diligence in procuring the issue of the grant and judicial measurement and formal possession, there would be no difficulty in disposing of this case agreeable to the prayer of the amended petition, but in the absence of the issue of the grant, and a segregation of the land, we
51 are unable to come to but the one conclusion, that this claim must be rejected, and a decree will be entered accordingly.

Rejected.

Filed in office April 3, 1855.

GEO. FISHER, *Sec'y.*

Recorded in Record of Decisions, vol. 2, page 610.

GEO. FISHER, *Sec'y.*

Decree.

HEIRS OF MARIA TEODORA PERALTA, deceased,
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners is not valid, and it is therefore decreed that their application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office April 3, 1855.

GEO. FISHER, *Sec'y.*

52 Recorded in Record of Decisions, vol. 2, page 612.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby
53 certify the foregoing thirty-seven pages, numbered from 1 to 37, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 648 on the docket of the said board, wherein Maria Teodora Peralta is the claimant against the United States, for the place known by the name of "Buococha."

In testimony whereof, I hereunto set my hand and affix my private seal

(not having a seal of office,) at San Francisco, California, this
[SEAL.] fifteenth day of October, A. D. 1855, and of the independence of the United States the eightieth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed October 23, 1855.

J. A. MONROE, *Clerk.*

55 *Notice of appeal.*

United States district court, northern district of California.

MARIA TEODORA PERALTA, MARIA BERNARDO DUARTE DE Valencia, *et als.*, claimants,
vs.
THE UNITED STATES OF AMERICA. } No. 314.

The United States land commissioners to ascertain and settle private land claims in the State of California, having rendered its decision in the above case, designated on the docket of said commission as No. 648, against the claim and title of the said claimants to the place or land called Buococha, situated in said district, notice is hereby given that it is the intention of the said claimants to prosecute their appeal from the said decision.

ROBERT SIMSON,
Claimant's Attorney.

April 16th, 1856.

Endorsed: Filed April 16th, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Petition on appeal.

56 United States district court, northern district of California.

MARIA TEODORA PERALTA
vs.
THE UNITED STATES OF AMERICA. } No. 314.

The appellants in this cause respectfully show that within the time required by law, a claim for the place or land called Buococha was presented to the United States board of land commissioners to ascertain and settle private land claims in the State of California, with a view to the confirmation of the right and title thereto, in the name of the said Maria Teodora Peralta, the original grantee of said Buococha, from the Mexican authorities of California; that the said Buococha is situated in said district, and is a *sobrante* or surplus of about two and one half square leagues, bounded by the ranchos of Bartolo Bojorques, Fernando Feliz, Juan Miranda, and Camilo, in the county of Marin, in said State; that the said board, upon
57 showing the death of the said Maria Teodora Peralta, and on motion on the part of her heirs, allowed her said heirs to be substituted for her as claimants in said cause, and thereafter gave its decision against and rejected the said claim and title, whereas the appellants allege the same to be good and valid, and deserving of confirmation; that heretofore, to wit, on October 23d, 1855, in the matter of said claim, a transcript of the proceedings and decision of said board, and of the papers and evidence upon which the same are founded, was filed with the clerk of this court, and thereupon appealing to this court from said decision, the appellants filed their notice of their intention to prosecute their appeal with the clerk of this court, within the time limited by law; that the only heirs of the said Teodora Peralta are, as is stated in the said transcript, Ascension Bernal de Buelna,

Jose Duarte, Maria Bernarda Duarte de Valencia, Dolores Duarte de
58 Riesgo, Josefa Duarte de Moraga, Alvino Duarte, and Dolores Duarte de Pacheo, who are legitimate sons and daughters of said Teodora and Guadalupe Bernal and Nicolas Bernal, who are of age, and certain minors, viz: Juan Bernal and Maria de los Reyes Bernal, Maria Antonio Pecheco and Jose Ramon Pacheco, legitimate grandchildren of said Teodora; that of the said heirs, the said Jose and Alvino, by certain mesne conveyances, ready to be produced, have conveyed all their interest, right, title, and share in and to said Buococha to said Maria Bernado Duarte de Valencia, who thereby is the owner of the one third part of said rancho, and that in like manner the said Ascension Dolores, Josefa, and Loreto, and Guadalupe, and Nicolas have heretofore conveyed all their interest, right, title, and share in and to said Buococha to N. W. Chittenden and Robert Limson, who thereby are the owners of the one half part of the said Buococha, the said minor heirs of said Teodora Peralta still being owners of their re-
59 spective shares thereof.

And these appellants, as part of this petition and of the evidence in this case, refer to the said transcript and to the papers and documents relating to said Buococha, heretofore on file before the said board, and they pray that the said decision be reviewed and reversed, and that their title and claim to said Buococha be confirmed by this court.

ROBERT SIMSON,
in pro. per., and as attorney of appellants.

Endorsed: Filed May 3, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

60 *Answer.*

In the district court of the United States for the northern district of Cal'a.

THE UNITED STATES *ads.* MA. TEO. PERALTA. } D. C. 314; L. C. 648.

The United States, by their attorney, deny the validity of the title set out in the petition of the appellant, and pray that the decision of the U. S. land commissioners be affirmed, and that said title be decreed invalid.

San Francisco, Feb. 12, 1857.

WM. BLANDING, *U. S. Att'y.*

Endorsed: Filed Feb'y 12, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

61 *Affidavit for continuance.*

U. S. dist. court, northern dist. of California.

THE UNITED STATES *vs.* MARIA TEODORA PERALTA. }

Robert Simson, being duly sworn, deposes and says that in the above-stated cause he is attorney of record for the said Maria Teodora Peralta, the appellant therein.

That on the part of said appellant the said case cannot safely be proceeded with for that the deponent has, after much search and diligence by sending letters and messengers, been unable to procure the attendance of a certain witness, named Jose Duarte, whose testimony is material to the case of the

appellant in said court. And deponent further says that the said witness, as deponent is informed and verily believe, resides in Marin County, and that his testimony can be obtained in this cause within two weeks from the date of this affidavit. That in said cause it has already been shown by affidavit that the map and final grant have been lost or mislaid, and
62 by said witness deponent verily believes and expects to prove, with other matters, that said map and grant heretofore existed and were in the possession of the said Maria Teodora Peralta, and that the same has been lost as aforesaid. And the deponent further says that the application for the continuance of said cause for two weeks, based on this affidavit, is made not for delay, but for purposes of justice.

ROBERT SIMSON.

Sworn to and subscribed March 9, 1857, before me.

W. H. CHEVERS, *Deputy Clerk.*

Endorsed: Filed March 9th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

63 *Deposition of Jose R. Meza.*

United States district court, northern district of California.

MARIA TEODORA PERALTA *et al.*
vs.
THE UNITED STATES.

SAN FRANCISCO, *March 17th*, 1857.

On this day before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths &c., &c., came Jose Ramon Meza, a witness produced on behalf of the claimants in case No. 314, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 648 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by J. Edgar Grymes, a sworn interpreter.

Present: —— Blanding U. S. dist attorney; Robert Simpson on part of the claimant.

Question by ———. What is your name, age, occupation, and residence,

Answer. My name is Jose Ramon Meza; my age 33 years; I am a
64 ranchero; I live in Marin Co. I know the land called "Buocacha." It is bounded by the ranchos Juan Martin, Bartolo Bojorquez, Camilo, and Fernando Feliz, and my own rancho and the Mirandas'. I knew Maria Teodora Peralta during her lifetime. I know and have heard and seen that she received a concession from the governor, Pio Pico, in the year 1846, of the said land. I was present when she received the concession from the hands of Timoteo Murphy, the alcalde at San Rafael. I was present when Timoteo Murphy called on Dona Maria Teodora Peralta at her house and told her that he had good news for her, and he delivered to her her grant for the said land. He Timoteo Murphy, said that he had received it from the governor, Pio Pico. The title was a concession of a league and a half, more or less, within the ranchos above mentioned. I heard the document
65 read at that time by Jose Duarte, the son of Dona Teodora Peralta. There present at the reading Timoteo Murphy, the said person who read it, Maria Teodora Peralta, and myself. Being a neighbor and my rancho being next I was interested to know if the title was good or bad. I know the said land to have been occupied by the claimant and her family since 1845, and until the squatters knocked down the house last year. The

land was a sobrante and occupied by her provisionally and by consent of the neighbors perhaps two years previous to the concession.

X-ex.

I think that I am pretty certain that it was in the year 1846, before the Americans came here. The title had a seal on it, like all seals on government titles. It was signed by Gov. Pio Pico, and I believe it was signed by Matias Moreno, the secretary. I saw the expediente at the same time that I saw the title; there was also a diseno attached. I heard the
66 expediente read. There was also a petition. The petition was signed by Maria Teodora Peralta. I do not recollect for certain that it was signed by her, it was either by her or one of her sons or somebody of the family. I do not recollect the date of the petition, but I believe, I think, but I am not certain that it was in the year 1846. The order was sent to Timoteo Murphy to say whether the land was vacant or not. Timoteo Murphy was the 1st alcalde of San Rafael. There was a report from Timoteo Murphy that the land was vacant. It is not certain that it was Murphy who signed the report, it is so long a time ago. Something about this matter I remember, somethings I don't, it is so long a time ago. I think that the names of Manuel Castro and Francisco Guerrero was attached to some of the papers. The husband of Dona Maria Teodora Peralta
67 was not present. I think that he was dead. I am not sure.

his
JOSE RAMON ⋈ MESA.
mark

Sworn to and subscribed before me this 17th day of March, 1857.
JOHN A. MONROE, *U. S. Commissioner.*

Endorsed: Filed March 25th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

68 *Order for commission.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the 26 day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable Ogden Hoffman, district judge.

MARIA TEODORA PARALTA *et als.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 314.

On petition of appeal from the U. S. board of land comm'rs to ascertain and settle private land claims in the State of California.

Upon motion of Robert Simson, counsel for the appellants in the above-stated cause, the U. S. district attorney for said district, Wm. Blanding, esq'r, being present, it is ordered by the court that a commission to take the deposition of Jose Matias Moreno, a resident of the town or county of San
69 Diego, in said State, be issued, and that the said commission be executed by J. R. Gitchell, esq., of said San Diego; and in case of his inability or unwillingness to execute the same, then that the same be executed by the county judge of the county of San Diego, in said State, at said town or at such other place in said county as such commissioner may appoint, that the deposition of said witness be read in evidence on part of said appellants on trial of the above-stated cause, and that said deposition of said witness be taken upon interrogatories filed or to be filed by the appellants, with ten

days' notice thereof to the said district attorney, at the expiration of which time, if no cross-interrogatories be filed by him, the said commission shall be issued *ex parte*.

Dated 26th March, 1857.

Endorsed: Filed March 26th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

70 United States district court, northern district of California.

MARIA TEODORA PERALTA *et als.*, appellants,
vs.
THE UNITED STATES, appellee. } No. 314.

On petition of appeal from the U. S. board of land commissioners to ascertain and settle the private land claims in the State of California.

Interrogatories to be propounded to Jose Matias Moreno, of the county or town of San Diego, in the State of California, to be used with his replies thereto as evidence upon the trial of the above-stated cause on the part of the said appellants.

1st. What is your name, age, and place of residence?

2d. Have you ever held any public office in California under the Mexican government thereof? If yea, state what offices you so held, when
71 and for what period you held such office, where you resided, and who was governor during said period.

3d. Had you as such public officer anything to do with concessions of lands in California, or with the documents relating to such concessions? If yea, state what were your duties in that respect, and state by whom such documents were usually written and dispatched.

4th. Did you know or know of Maria Teodora Peralta? If yea, state what you know of any concession of lands made to her during your term of office. State what lands were granted to her by such concession. State what you know concerning any expediente or documents relating to such concession. State of what documents such expediente may have been composed.

5th. State whether or not during your term of office any matters,
72 grant, or document of concession of said lands was issued to or in favor of said Maria Teodora Peralta; and if so issued, who made the same? According to what order was the same made and issued? And if said order were in writing, who wrote the same?

6th. State as nearly as you can the purport and contents of the said grant or document of concession, if any there were, what lands, if any, were granted by it, and to whom they were granted, and also state by whom was the said grant or document of concession executed and signed.

7th. What was done with the said grant or document after its execution?

8th. Have you ever before testified in this case? If yea, state whether or not there were then shown to you certain original papers in the office
73 in the city of San Francisco, where are kept the documents formerly belonging to the United States land commission. State whether and where and under what circumstances you had ever previously seen the said papers, and state all other matters that you know respecting the same.

9th. From what circumstance do you recollect this grant of land to Maria Teodora Peralta? State all circumstances or matters relating to the same that you can recollect. Declare fully in respect thereto, and in respect to every matter relating to any such concession or grant of lands to said

Maria Teodora Peralta as fully as if you were particularly interrogated regarding the same.

ROBERT SIMSON, *Appellants' Attorney.*

Endorsed: Filed March 26th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

74 *Deposition of C. Arenas.*

United States district court, northern district of California.

MARIA TEODORA PERALTA
vs.
THE UNITED STATES.

SAN FRANCISCO, *April* 3*d*, 1857.

On this day, before Jno. A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Cayetano Arenas, a witness produced on behalf of the claimants in case No. 314, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 648 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Wm. N. Meeks, a sworn interpreter.

Present: Simson & Chittenden and W. Blanding, U. S. dist. att'y.

Questions by claimants' counsel.

1st. What is your name, age, and residence?

75 Answer. My name is Cayetano Arena; age 32 years; and residence San Buena Ventura. I have held offices under the Mexican gov't, as a writer in the governor's office, when Pio Pico was governor, which, I think, was a part of the year '44, all of '45, and a part of '46, but I do not accurately remember; during this time I resided at Los Angelos. My duties in the office were to write in the office such papers as were given to me by the secretaries, and a part of my duties was to write out such grants as were given to me by the secretaries. The governor ordered the issuance of the grants, and they were ordinarily written by the secretaries or employees of the office and forwarded by the secretaries. I have never seen Maria Teodora Peralta, but knew her by reputation. I know of a grant to Maria Teodora Peralta during my term of office. In the first place a petition was made to a judge in this place, by him submitted to Don Manuel Cas-

76 tro for his report, (who was then prefect,) and by the prefect sent up to the governor, who ordered the secretary to issue the title. The secretary then wrote the title himself and sent it to Manuel Castro, the prefect, to be delivered to Maria Teodora Peralta. The grant was for a tract of land, with a strange name, containing some league and a half or two leagues, and was situated somewhere near San Rafael. I know of my own knowledge that the papers were issued, because it was an unusual thing to issue grants to a woman, there only having been one or two grants to my knowledge of that kind issued. I only know as to the location of the land that it is situated near San Rafael. I have seen the documents in the surveyor's office, and they are the original and genuine papers. I know the signatures of Pio Pico and Manuel Castro. The name of the granted land, I recollect, was Buococha.

77 *Cross-ex'd.*

The papers I saw consisted first of a petition to the justice of the peace

and one or two reports of the judges and prefect and then the governor's decree. The petition was for a sobrante. The grant was written by Matias Moreno, the secretary. I had nothing to do with writing the grant. I know about this grant of my own knowledge, because it was one of the first grants made during the administration of Matias Moreno as secretary. I myself saw the grant itself when it was written out in the governor's office in Los Angeles. It had the two signatures of the governor and secretary. That they sent the grant by the public post from Los Angeles to Monterey, but I do not know in whose hands it fell or what became of it. The secretary of the government sent it. It was sent to the prefecture. I do not remember for certainty, but I think it was in the month of April, 1846, when Matias Moreno, the secretary, came into office. I saw the espediente
78 in the archives this morning.

CAYETANO ARENAS.

Sworn to and subscribed before me this 3d April, 1857.

JNO. A. MONROE, *U. S. Commiss.*

Endorsed: Filed April 10th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

79 *Deposition of M. B. D. de Valencia.*

United States district court, northern district of California.

MARIA TEODORA PERALTA
vs.
THE UNITED STATES.

SAN FRANCISCO, *June* 17, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Maria Bernada Duarte de Valencia, a witness produced on behalf of the claimant in case No. 314, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 648 on the docket of the said board of commissioners, and was duly sworn and testified, his evidence being interpreted by W. N. Meeks, a sworn interpreter.

Present: Robert Simson, att'y for cl't, and W. Blanding, U. S. dist. att'y.

Question by claimant. What is your name, age, and residence?
80 Answer. Maria Bernada Duarte de Valencia; my residence is Alameda County, Cal. I am the daughter of Maria Teodora Peralta, the claimant in this case. My mother had nine children, to wit: Juan Bernal, Ascencion Bernal, Jose Duarte, Alvino Duarte, Bernada Duarte, which is myself, Dolores Duarte, Josefa Duarte, Guadalupe Duarte, and Loreto Duarte.

Witness is here shown a paper, and is asked if it be a true statement of the family as it now exists, said paper being hereto attached, and replies that—

It is. I know the rancho Buococha. It was granted to my mother. I have seen the documents pertaining to the title of said rancho. If I remember, they consisted of a title information or reports, and the espediente; there was a map also. I have seen the map and concession which were given by my brother Alvino to an agent, Casanueva. The grant was made by Governor Pico, it appears to me, in the year 1845. I have seen the con-
81 cession in the possession of my mother. She had provisional possession of the land for a little more than a year before the issuing of the concession by Pio Pico, which was in 1846, after the grant. The family held

possession of the rancho up to the year 1856, when the house was knocked down by the squatters. Now I have no interest in the rancho of "Buococha." Two of my shares I have sold for my subsistence, and my other share I have transferred for the education of my children. The diseno or map is that which was given to Casanueva, and the concession, I think, was lost, for the reason that it was not fastened to the espediente.

Cross-examined.

I saw the grant at the rancho of Ygnacio Pacheco. I don't remember very well, but I think it was between the years 1846 or 1847. My mother lived with Ygnacio Pacheco. The way in which I came to see the grant was because my mother showed me the papers. The grant had a seal to it. I think it had a printed heading. I think it was signed by the governor
82 and Matias Moreno. It was for that vacant land of the rancho of Buacocha. It was something like two two leagues, more or less. It was a sobrante. I have searched for the paper because my mother told me she had looked for it (the grant) and was sad because she could not find it. She said it was lost when the Americans came to the country. My mother lived on the rancho at the time the Americans came here, and a little time after, about one year; then she went to live at the house of Ygnacio Pacheco. All the papers were not lost. Those which were not lost are the same presented to the commission. The espediente, together with some reports in favor of my mother, were presented to the commission. At the time my mother died I had one share, 1-9, and after she died I acquired two other shares from my brothers, which is 3-9 in all or $\frac{1}{3}$. I sold the two shares acquired from my brothers to two Germans. I do not know of my own
83 knowledge that the grant was delivered to my mother, because I was not present at the time, but I have seen it in her possession.

M'A BERNADA DUARTE DE VALENCIA.

Sworn to and subscribed June 17th, 1857, before me.

J. EDGAR GRYMES, *Special Com'r.*

[Diagram follows, page 84.]

85 Endorsed: Filed July 30th, 1857.

JOHN A. MONROE, *Clerk,*
By W. A. CHEVERS, *Deputy.*

Deposition of Jose Matias Moreno.

United States district court, northern district of California.

SAN FRANCISCO, *May* 3*d*, 1856.

On this day before me, Geo. Pen. Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Jose Matias Moreno, a witness produced on behalf of the appellants in case No. 314, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 648 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence been interpreted by Wm. N. Meeks, a sworn interpreter.

Present: Robert Simson, esq., appearing on behalf of the claimants and appellants. No U. S. dist. att'y is present, that office in the north'n
86 dist. of Cal'a being now vacant.

Questions by appellants.

1st. What is your name, age, and place of residence?

1889

Answer. My name is Jose Matias Moreno; my age is thirty-seven years; my residence is in the county of San Diego.

2nd. State what is your intention as to leaving the northern district of California.

Answer. I intend to leave said district by the steamer Sea Bird on her next trip. I believe to-day. I do not know when I shall return hither.

3rd. Have you ever held any public office in California under the Mexican government thereof? If yea, state when and for what period you held such office, where you resided, and who was governor of California during said period.

87 Answer. In April, 1846, I was appointed to the office of secretary to the government of the department, and continued to hold said office until the Mexican government ceased in California on its conquest by the Americans. I resided during that period mostly in Los Angeles. Pio Pico was governor during all that period, and had been so for a long time previously.

4th. Had you as secretary anything to do with concessions of lands in California or with the documents relating thereto? If yea, state what your duties were in that respect.

Answer. All documents relating to concessions were written out either by me or by the clerks in my office. At that time in California there were but few clerks to be had, and I was in the habit frequently of writing such documents myself. All documents of the government were written and dispatched either by me personally or under my supervision.

88 5th. Did you know Teodora Peralta? State what you know of any grant of lands made to her during your secretaryship.

Answer. I never knew her personally, as she lived in the northern part of the department. I remember that while I was secretary a concession of lands was made to her by the government. The land was a sobrante, named Buocacha. The expediente in the case was composed of documents that were forwarded to the government by Don Manuel Castro, prefect of the first district in California. I myself wrote the grant or document of concession, which was issued in accordance with Governor Pico's decretal to that effect written at the end of the expediente.

6th. State as nearly as you can the purport and contents of the said grant or concession.

89 Answer. I cannot state exactly its purport and contents. It was like other grants issued where the grantee had previously been in possession of the lands granted. By it there was granted to Maria Teadora Peralta the sobrante or surplus called Buocacha, according to the description thereof in the expediente. The grant was duly executed by the proper officer, being signed by Governor Pio Pico, and by myself as secretary.

7th. What was done with the said grant or document of concession after its execution?

Answer. After its execution I dispatched it to the grantee, and have not seen it since. I sent it by the usual post of the public service.

8th. Have you ever seen the said expediente since the time of issuing the said concession? If yea, state all the matters that you know respecting it.

90 Answer. Never until to-day, when, at the request of the appellants, I went to the office where are kept the papers formerly belonging to the United States land commission. The expediente marked "A, Thompson Campbell" was there shown me, filed in case No. 648, being the claim of Maria Teodora Peralta for the place called "Buococha." At the request of one of the appellants I carefully examined the said expediente,

and I recognize it to be the same which was formerly in the secretary's office at Los Angeles while I was secretary. The decretal order which is written at the end of the said expediente in the words, Angeles, F'bo 18 de 1846, Estiendaele el titulo que le asegure la propiedad al interesado, Pico, I recognize to be in the handwriting of Gov. Pio Pico, and signed with his genuine signature and rubrica. I have often seen him write, and am well acquainted with his handwriting, signature, and rubrica.

9th. Were there not many grants of land made during your said secretaryship? If yea, how is it you so well remember circumstances at-
91 tending this grant of Buococha to Maria Teodora Peralta?

Answer. I recollect this from several circumstances. She belonged to a family well known in California. Hers was one of the first grants made after I entered upon my duties as secretary. It was also an unusual thing to grant lands directly to a woman. During my secretaryship I recollect only three such concessions, viz: this grant of Buococha to Maria Teodora Peralta, another of six leagues of land called San Jacinto to Dona Rosario Estudillo de Aguirre, another an appropriation by the assembly of a grant to the sister of the latter, Maria Antonio Estudillo de Pedrorena, of the Rancho del Cajon, in the present county of San Diego. These three titles were all dispatched about the same time, and were among the first which passed through my hands after I entered upon my secretaryship. They were dispatched in the beginning of May, 1846, and each case the respect-
92 ive documents were sent to the grantee forthwith by the usual post of public service.

JOSE MATIAS MORENO.

Sworn to and subscribed before me this 3rd day of May, A. D. 1856.

GEO. PEN. JOHNSTON,
U. S. Commissioner.

Cross-examination.

MAY 28th, 1859.

Present: P. Della Torre, U. S. att'y.

Question 1. Look at the document now shown to you, marked "A, Thompson Campbell," filed in this case before the board of land commissioners, and which purports to be an expediente for the land claimed in this case, and say if you mean to swear that the words, Angeles, F'bo 18 de 1845, Estien dasele el titulo que le asegure la propiedad al interesado, Pico," on the 8th page are the genuine handwriting, signature, and rubrica of Gov. Pio Pico?

93 Answer. I believe those words to be in his handwriting. The P in his name is a little different from that which he generally made, but still I believe it to be his genuine signature.

Question 2. Compare that signature with the one appended to the letter addressed to you by Pio Pico, under date of the 20th of April, 1846, and attached to your deposition in the case of the United States *ads.* Henry Cambuston, filed within a few days past, and see if there are any and what differences.

Answer 2. There is a difference. The signature to the letter is well written, and the other is badly written. I think the signature to the words quoted above is genuine, because I am positive that the words themselves are in his handwriting.

Question 3. Did you ever see Pico make such a signature as that upon this alleged espediente?

Answer 3. I never saw him make a rubrica like the one to this
94 signature. I have some doubt of its being his rubrica. I rather think it is not his rubrica. I have no confidence in it.

Question 4. When a "titulo" was issued to a petitioner for lands during the Mexican possession of California what was done with the petition, diseno, informes, and other proceedings in the matter?

Answer 4. They remained in the government archives. They were then known by the name of espediente.

Question 5. Among Mexicans and especially for official purposes was not the forming of the rubrica a matter of more care and importance than the forming of the letters of the name which composed the other portion of the signature?

Answer 5. I think not. Sometimes people would sign and make their rubricas in a careless and rapid manner, and at other times carefully and well.

95 Question 6. Is it not customary among the educated for each person to have a certain and well defined rubric?

Answer 6. Yes, sir. It altered at pleasure, but generally it is the same.

Question 7. Were there not under the Mexican laws many official acts which could be attested by the rubrica alone without the signature of the name?

Answer 7. In some cases this was done.

Question 8. Was it not then important that an officer in high position should be particular in preserving a uniformity in his rubrics, so that his attestations thereby might be recognized with certainty?

Answer 8. When a person was appointed to an important office a circular was sent around to the several departments or officers, bearing his rubric, generally well made, but when he became well known he would sometimes make his rubric with less care and not exactly like the one on the

96 circular. It was important that he should not change it, but some would not be as well made as others.

Re-examination in chief.

Question 9. What office did Pio Pico hold in Cal'a during the years 1845 and 1846?

Answer 9. He was governor—civil governor of California.

Question 10. Did the espediente always remain in the archives as has been asked?

Answer 10. The original espediente always remain in the archives.

Question 11. Was it customary for persons to vary the form of their rubricas at different periods of their lives?

Answer 11. It was customary to do so, but notice was first given

97 to correspondents stating the new one which had been adopted.

JOSE MATIAS MORENO.

Sworn to and subscribed before me this 28th day of May, 1859.

GEO. PEN. JOHNSTON, *U. S. Commissioner.*

After this deposition closed the witness desired to state that in reply to the 3d question on his examination in chief, he is made to say: "In April, 1846," &c., &c.; that this was not what he did state, but that his statement was that " on the first day of May, 1846," &c.

JOSE MATIAS MORENO.

Sworn to and subscribed before me this 28th day of May, A. D. 1859.

GEO. PEN. JOHNSTON, *U. S. Commissioner.*

Mem.—Cross-examination had subsequently to the direct examination and attached afterwards.

Endorsed: Filed May 31st, 1859.

W. H. CHEVERS, *Clerk.*

98 *Affidavit of R. Simson.*

United States district court, northern district of California.

THE UNITED STATES OF AMERICA *ads.* MARIA TEODORA PERALTA *et al.*, appellants. } No. 314.—Claim for the place called "Buocacha."

Robert Simson, being duly sworn, deposes and says that in the above-stated cause he is attorney of the appellants, and is also a party interested in the lands therein claimed.

That heretofore the same has been submitted to the court upon verbal understanding between deponent and the U. S. district attorney of said district; that said cause be argued, or that briefs be filed therein after said submission thereof.

That Pio Pico, while governor of California, in the year 1846, made the grant to said Maria Teodora Peralta and certain writings which, with others from the espediente in this cause, appear in his handwriting.

That said Pio Pico is now temporarily in said district, to wit, in
99 the city of San Francisco, and is an important and necessary witness in this cause without whose testimony the claimants cannot safely finally submit their cause herein, and who, as deponent is informed and believed, can testify as to the validity of said writings and the signature of said Pico thereto signed, and also as to the issuing of the grant to said Teodora by the then government of California.

That at the time of said submission said Pico was not in said district, and it was believed by deponent that it would be impossible to obtain his testimony herein.

That the motion of appellants hereon based for the opening of this cause and for leave to take the testimony of said Pio Pico therein, is made not for delay, but for purposes of justice.

ROBERT SIMSON.

Sworn to and subscribed September 8th, 1859, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed September 8th, 1859.

W. H. CHEVERS, *Clerk.*

100 *Order opening cause and allowing deposition of Pio Pico to be taken.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the 8th day of September, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* M'A T. PERALTA. } No. 314.

On reading and filing affidavit of R. Simson, and on motion of the said Simson, counsel for the claimants, it is ordered by the court that this cause be, and the same is hereby, restored to the trial docket for the purpose of taking the testimony of Pio Pico.

Endorsed: Filed September 8th, 1859.

W. H. CHEVERS, *Clerk.*

101 *Deposition of Pio Pico.*

United States district court, northern district of California.

THE UNITED STATES
ads.
MARIA TEODORA PERALTA *et al.*

SAN FRANCISCO, *Sept.* 9, 1859.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Pio Pico, a witness produced on behalf of the claimant in case No. 314, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. —— on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by John P. Brodie, a sworn interpreter.

Present: T. R. Wise, acting U. S att'y; Robert Simson, for claimant.

Questions by claimant's attorney.

Ques 1. What is your name, age, and place of residence?

102 Ans. Pio Pico; 58 years of age; I reside in the county of Los Angeles.

Ques. 2. Did you, during the years 1845 and 1846, hold any official employment in California? and if so state what that official employment was, and during what time you held the same.

Ans. 2. I was governor of California from the end of the year 1844 until August or September, 1846.

Ques. 3. Examine the document or espediente in this cause filed herein before the U. S. land commission and marked "A, Thompson Campbell," and say if you recognize in it your handwriting signature and rubrica, and say what are the words, if any, written thereon by you.

Ans. 3. The portion of the espediente on the 8th page of the espediente in these words: "Angeles, F'bro 18 de 1846. Estien dasele el titulo que le asegure la propiedad al interesado, Pico," are in my handwriting,

103 and the signature and rubrica appended to it are mine.

Ques. 4. State, if you remember, whether any concession was made in conformity with your orders in the words quoted above.

Ans. 4. I do not know; I do not recollect; but the lady herself told me that she had a grant of land.

(U. S. att'y objects to the last part of foregoing answer, because it is not responsive to the question and is hearsay evidence.)

Ques. 5. State what was usually done with the documents which formed the espediente when concession of land was made in California during your term of office as governor.

Ans. 5. They remained in the archives in the secretary's office as usual.

Ques. 6. Please state if such documents did not frequently pass to the possession of the grantees without being left in the archives.

104 (Question objected to as leading; objection withdrawn.)

Ans. 6. I believe not; the title paper alone was delivered.

Cross-examination.

Ques. 1. Have you a good memory?

Ans. 1. I have not; I have a very frail memory.

Ques. 2. Do you recollect the fact of having signed this espediente, or when you signed it, or do you know anything more about it except that you see your handwriting and signature there?

Ans. 2. I have no recollection of having signed, or when, except from seeing my handwriting, but I am sure that I did write it and sign it.

Ques. 3. Are you sure when you signed?

Ans. 3. I believe I am sure.

Ques. 4. When did the claimant tell you she had a grant?

105 Ans. 5. I think it was in 1855, at Los Angeles; she told me she had a grant, but that the title-paper had been mislaid or lost.

Ques. 6. By what means do you arrive at this date?

Ans. 6. Because about a week or two ago the lady put me in mind of having spoken to me on the subject at Los Angeles at that time.

Ques. 7. After making the order which you made in this case could you not have refused a title?

Ans. 7. No.

Ques. 8. Had you the power to refuse the title?

Ans. 8. I could if proper cause was shown to the government.

Ques. 9. Are you certain that you signed no documents relating to lands in California after July, 1846?

106 Ans. 9. I am certain, but I may have have signed as late as August and September, when I left California.

Ques. 10. Are you certain that you signed no such document after August or September, 1346?

Ans. 10. I am certain, that is documents with regard to land.

(The witness stated that the lady that he had the conversation with in Los Angeles in 1855, and two or three weeks ago in this city, was Bernado Duarte.)

I do not know whether she was the grantee or her daughter.

PIO PICO.

Subscribed and sworn to before me this 9th Sept., 1859.

CUTLER McALLISTER, *U. S. Comm'r.*

Endorsed: Filed September 16th, 1859.

W. H. CHEVERS, *Clerk.*

107 *Deposition of R. C. Hopkins.*

District court of the United States, northern district of California.

THE UNITED STATES *ads.* MA. TEODORA PERALTA.

SAN FRANCISCO, *May* 1, 1861.

On this day before the district court of the United States for the northern district of California, came R. C. Hopkins, a witness produced on behalf of the United States, in case No. 314, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 648 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Calhoun Benham, esq., U. S. att'y, and P. Della Torre for the U. S., and Robert Simson for claimant.

Question 1st, by counsel for the U. S. Your name, age, occupation, and place of residence?

Answer. R. C. Hopkins, of lawful age, and keeper of the archives of the former Spanish and Mexican government, in possession of the sur-

108 veyor general of the United States for California, and reside in San Francisco.

2. What papers have you brought from said archives to be exhibited to the court?

Ans. I have brought 1st, the original expediente of the grant to Ma. Teodora Peralta of a place named Buococha; 2d, original expediente and grant to Da. Ma. del Rosario Estudillo de Aguirre, of the rancho of San Jacinto Viejo y Nuevo; 3d, original expediente and grant to Antonia Estudillo de Pedromina, of the placed named "El Cajon."

R. C. HOPKINS.

Sworn to and subscribed before me this first day of May, A. D. 1861, in open court.

W. H. CHEVERS, *Clerk.*

Endorsed: Filed May 1st, 1861.

W. H. CHEVERS, *Clerk.*

109 *Opinion of the court rejecting claim.*

United States district court, northern district of California.

THE UNITED STATES
vs.
MARIA TEODORA PERALTA. } No. 314.

The claim in this case is founded on an alleged grant by Pio Pico made in the spring of 1846.

The expediente which is produced by the claimant shows that in 1845, she petitioned the alcalde of San Rafael to obtain a report from the colindantes of a certain tract she desired to solicit from the government, in order that the report might accompany her petition to the governor for a grant of the land.

On the same day the magistrate certifies that the colindantes had stated before him that the sobrante asked for was vacant and might be granted.

On the 8th November, 1845, she presented a petition to the prefect, in which she set forth her previous application to the alcalde and the report of that officer, and requesting him to take such further proceedings as
110 might be necessary.

This petition was referred by the prefect to the sub-prefect, and by the latter to the first judge of San Rafael.

On the 29th November the first judge reports the land to be vacant.

On the 20th December Castro, the prefect, recommends to the governor that the title issue.

And on the 18th February, 1845, the governor attaches to the expediente an order to that effect.

The expediente containing all these documents is produced by the claimant. The archives contain no record or trace whatever of any of these proceedings.

There seems no reason, however, to doubt the genuineness of any of the papers except the last and most important of all, viz: the order by the governor that the title issue. This order and the signature are evidently in Pico's handwriting, but his signature bears little resemblance to
111 those elsewhere found in the archives, the uniform and striking peculiarities of which this court has had frequent occasion to comment on. But it resembles the mode of signing his name, and especially forming the letter "P" adopted by him at a much later period.

No explanation is offered of the circumstance that the expediente is found in the claimant's possession. Had it ever reached the governor, and had he made the order for the issuance of the title it is difficult to imagine how it found its way into the claimant's hands and has since been preserved, while the title paper which it is alleged was issued had been lost.

If, however, after obtaining Castro's recommendation the claimant pro-

cured the expediente from that officer in order to send it to the governor, and through accident or neglect omitted to do so until the war broke out, her possession of the expediente and the absence of a grant are easily
112 understood.

It is unnecessary critically to examine the testimony by which the existence of a grant and its loss were sought to be established.

In this case there is neither a grant nor archive evidence. What, in the absence of even the latter evidence, alone is the nature of the testimony the court will exact before confirming a claim is very explicitly laid down by the Supreme Court in United States *v.* Castro, 24, How 350, and by the authority of that case I am governed. I may add that the fact that the expediente is not found in the archives, but in the claimant's possession, is far stronger evidence to my mind that it was not presented to the governor, than the somewhat inconsistent statements of the witnesses who have attempted to prove that a grant was in fact issued; nor is this conclusion materially weakened by the circumstance that at the end of the expediente is an order that the title issue, for that order has a very suspicious
113 appearance, and there are no means of knowing with certainty at what time Pio Pico appended it to the expediente.

The fact, too, that in her petition to the board the claimant herself stated that no title was issued owing to the political disturbances is of some significance. For although the petition was amended on the allegation of a mistake or misapprehension of those in charge of the claim, it seems highly improbable that a mistake on so important a matter could have been committed or that the claimant could have failed to apprise her counsel of the fact that she had received a grant and that it had been lost.

The confirmation of this claim is urged on the authority of the United States *v.* Alviso, 23 How, 318. But that case differs from this in the circumstance that Alviso, so far back as 1838, obtained from the governor permission to occupy the land solicited while the proceedings were
114 pending to perfect the title.

The report of the case states that it was proved that his occupation commenced in 1840, and had continued for fourteen years, during which time he had been recognized as owner of the land. "No imputation was made aganist the integrity of his documentary evidence, and no suspicion existed unfavorable to the *bona fide* of his petition or the continuity of his possession and claim."

In the case at bar the circumstances are very different.

It is by no means satisfactorily proved that the petition and accompanying reports were ever laid before the governor. No grant is produced nor any corroborative proofs from the archives. The only evidences offered is parol testimony, some of which comes from witnesses well known to the court, and a brief order signed by Pio Pico, which may have been a
115 very recent addition to the expediente. In Alviso's case the governor, after granting the provisional permission to occupy, naturally returned the papers to the petitioner for the reports, etc., required.

It was therefore found in his possession, or that of the officer's whose informes were asked for.

But in this case if the claimant's allegation be true and the governor not only ordered the title to be issued, but actually signed and delivered it, there is no mode of accounting for the fact that the expediente was not retained by him and archived as usual.

The evidence of possession and occupation is far less strong and satisfactory than in Alviso's case.

Richardson swears that the claimant was occupying the land in 1844. Castro testifies that she was living there in 1843.

Ma. B. Duarte de Valencia, the daughter of the claimant, swears to her

reception of the grant, and that for about a year previous to its de-
116 livery she had occupied the land under a provisional license. But there is no record evidence whatever of any such provisional license.

It certainly did not come from the governor, for the petition was sent to him for the first time in January, 1846, and the only action he is claimed to have taken on it was to issue the final title at once.

It was not granted by the prefect, the sub-prefect, or the alcalde, for the expediente shows that no such grant was solicited, and that those officers merely made favorable reports to be laid beforé the governor. Pacheco swears that he gave her possession after the grant in his capacity as alcalde, but this statement seems quite incredible.

1st. The grant not having been approved, no judicial possession could regularly or legally be given.

2d. The grant being for a sobrante, no judicial possession could be given of it until the boundaries of all the colindantes were determined and
117 the extent of the sobrante ascertained.

3d. The legal evidence of the giving of judicial possession is the formal record of the proceeding. No such record is produced, nor is its absence accounted for. The claimant has not even offered the testimony of any of the colindantes and neighbors, who must have been present at the ceremony. We have only the bare statement of the alcalde that he gave possession of the land at the time of the granting thereof.

It is probable, however, from all the testimony, that about of the first application to the alcalde and the certificate of the colindantes, that the land was vacant, the claimant went upon it and erected a house, etc. This was in the summer of 1845. She had no written permission to do so, but it was probably not objected because there seemed no obstacle to her obtaining the title.

But that title she did not, in all probability, obtain, at least there
118 is no evidence sufficient according to the rules laid down by the Supreme Court to justify me in pronouncing that the grant issued.

If, then, the petition was never presented or not acted on by the governor, I am unable to discover in the fact that she moved on the land and occupied it for about a year prior to the conquest of the country any substantial equities which require or authorize a confirmation.

The case is undoubtedly a hard one for the claimant, or rather her heirs, for she is now deceased. She is said to have been of a reputable family, and the reports of the alcalde, the prefect, etc., show that she would have had no difficulty in obtaining the land. But if by accident or neglect she failed to get it, I see not how this court can remedy the misfortune.

My opinion is that the decree of the board rejecting the claim
119 should be affirmed.

Endorsed: Filed April 4th, 1863.

W. H. CHEVERS, *Clerk.*

Decree rejecting claim.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 13th day of May, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
MARIA TEODORA PERALTA. } No. 314.

This cause came on to be heard on the appeal of the claimant from the

final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress
120 approved March 3, 1851, upon the transcript of the proceedings and decision of the said board, and upon the further evidence in this court taken by order of the court; and it appearing to the court that the said transcript was duly filed according to law, now, therefore, the cause having been regularly brought to a hearing, counsel for the respective parties present and heard, and due deliberation had in the premises, it is ordered, adjudged, and decreed that there is no error in the decree of the said board, and the said decree is hereby affirmed. And it is further ordered, adjudged, and decreed that the claim of the said Maria Teodora Peralta is invalid, and that the same be, and hereby is, rejected, and that the petition of the said claimant, Maria Teodora Peralta, for a confirmation be, and the same hereby is, dismissed.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed May 13th, 1863.

W. H. CHEVERS, *Clerk.*

121 *Order granting appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 15th day of September, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
MARIA TEODORA PERALTA. } No. 314.

In this case on application of R. Simson, esq., counsel for claimant, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court, rendered in said cause at the December term, 1862, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in said cause be sent to the Supreme Court of the United States with-
122 out delay.

Endorsed: Filed September 15th, 1863.

W. H. CHEVERS, *Clerk.*

123 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the foregoing one hundred and twenty-two pages numbered from 1 to 122, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, and the papers and evidence on which said decision was founded, as the same appear of record in my office in case No. 314 on the docket of said court, wherein Maria Teodora Peralta is appellant and the United States are appellees, for the place named "Buococha."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at San Francisco, Cal., this 9th day of October, A. D.
[SEAL.] 1863.

W. H. CHEVERS, *Clerk.*

Filed January 8, 1864.

Supreme Court of the United States.

MARIA TEODORA PERALTA'S HEIRS AND OTHERS,

APPELLANTS,

VS.

THE UNITED STATES.

Claim for the Place or Land named Buacpchá situated in the present County of Marin, California.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE APPELLANTS.

J. S. BLACK,

Counsel for Appellants.

Agnew & Deffebach print, cor. Sansome and Merchant Streets.

Supreme Court of the United States,

No.----------

MARIA TEODORA PERALTA'S HEIRS et al.
Appellants,

vs.

THE UNITED STATES.

BRIEF FOR THE APPELLANTS.

This case comes before the Court on appeal of said Appellants from the decision of the United States District Court for the Northern District of California.

FACTS AND PROOFS.

EXPEDIENTE:—The documents forming the Expediente in said case appear as follows, viz.: 1. The Petition of Maria Teodora Peralta to the Alcalde or Judge of San Rafael. 2. The Report and Certificate of the said Alcalde or Judge and the neighboring owners or Colindantes. 3. The Petition of said Maria Teodora Peralta to the Prefect of the District. 4. The Prefect's order

of reference to the Sub-prefect. 5. The Sub-prefect's order of reference to the First Alcalde or Judge of San Rafael. 6. The Report and Certificate of said First Alcalde or Judge back to said Sub-prefect. 7. The Report of said Sub-prefect back to said Prefect. 8. The Report and recommendation of the said Prefect to the Governor. 9. The Decree or Decretal order of the Governor to extend or issue the title—*titulo*—to the petitioner.

CHARACTER OF SAID DOCUMENTS OR EXPEDIENTE:—The said Documents or Expediente are to the following effect:

1. The Petition of Maria Teodora Peralta to the Alcalde or Judge of San Rafael is dated June 26, 1845, and states that she intends to solicit from the Departmental Government the place known by the name of Buacochá, which is vacant land lying between the Ranchos of Bartolo Bojorquez, Fernando Feliz, Juan Miranda, and Camilo, and asks said Alcalde or Judge to obtain from the persons named a report as to the ownership of the land and whether the same can be granted to her, in order that this report may accompany her Petition to the Governor for a grant of the land.

2. The Report and Certificate of the said Alcalde or Judge and the neighboring owners or colindantes, bears date on the same day, and states that the said neighboring owners or colindantes appeared before said magistrate and certified that the land or sobrante asked for by Maria Teodora Peralta, was vacant and might be granted to her in its full extent, as it did not reach two leagues,—with the understanding that the grant should not embrace more than the sobrante remaining after the survey of their Ranchos.

This Report and Certificate is signed by Ignacio Pacheco, the

1905

second Alcalde or Judge, and by Timoteo Murphy, the first Alcalde or Judge of San Rafael, and also by the neighboring owners or colindantes.

3. The Petition of Maria Teodora Peralta to the Prefect of the District is dated November 8, 1845, and sets forth that she is a native of the same Department, and a *vecina*, or resident of the Pueblo of San Rafael. That in the month of June of the same year she solicited provisionally from the proper Alcalde the vacant land named Buacochá, bounded by the lands of Bartolo Bojorquez, Fernando Feliz, Juan Miranda and Camilo, also that her petition is accompanied by the report and certificate of said magistrate and the neighboring owners or colindantes, and earnestly requests the Prefect to take such further steps as might be necessary in the premises.

4. The Prefect Castro's order of reference to the Sub-prefect of the District is dated November 20, 1845, and directs the last-named officer to examine and report upon said petition.

5. The Order of reference of said Sub-prefect, Francisco Guerrero, to the First Alcalde or Judge of San Rafael is dated November 26, 1845, and directs the last named magistrate to examine and report whether the requirements of the law have been complied with in the premises.

6. The Report and Certificate of said First Alcalde, or Judge of San Rafael, Timoteo Murphy, back to said Sub-Prefect, is dated, November 29, 1845, and states that he, said magistrate, knows the place called Buacochá to be vacant land and that it can be granted to the petitioner, Maria Teodora Peralta, but so as not to interfere with the Ranchos of the neighboring owners or colindantes.

7. The Report of the Sub-prefect, Guerrero, back to the Prefect Castro, bears date December 14, 1845, refers to the said Report of First Alcalde, or Judge of San Rafael, Murphy, states that the petitioner is a married woman and her husband absent, and leaves the said Prefect, in view of the documents presented, to act in the matter as he shall think just.

8. Thereupon the said Prefect, Castro, reports and recommends to the Governor Pio Pico that, in view of the foregoing Reports and proceedings, and of the fact that the petitioner is a native of the soil and burthened with a large family, although her husband is absent, the Prefecture sees no difficulty in making her the grant she asks, etc. This document bears date, Monterey, December 20, 1845.

9. The Decree, or Decretal order of the Governor, Pio Pico, written upon and forming part of said Expediente, is as follows, viz. :—

"ANGELES, Febro, 18 de 1846.

Estiendasele el titulo que le asegure la propiedad al interesado. PICO."

Anglice —

Let there be extended (or issued) to her the title which shall secure the property to the interested party.

GENUINENESS AND AUTHENTICITY OF SAID DOCUMENTS OR EXPEDIENTE.—The genuineness and authenticity of the documents composing the Expediente, particularly of said Decretal order of Governor Pio Pico to issue the *titulo* are, we submit, fully proven. The testimony upon these points is substantially as follows :

Manuel Castro, (deposition, August 29, 1853) testifies that he knows the documents marked "A"—the Expediente—has before

had the same in his hands and recognizes the same as genuine. The signatures of Jose Duarte, Ignacio Pacheco, Fernando Feliz, Timoteo Murphy, Francisco Guerrero, Pico, and Castro—the last his own signature—are genuine wherever they occur in said documents. Has seen them all write frequently and is well acquainted with their signatures. The "Pico" referred to was Pio Pico's signature. Witness signed the documents as Prefect of the 2nd District in California. On cross-examination, states that after he dispatched the said Expediente to the Governor (January 1846—vide Dep. Jan. 7, 1855), and has not seen the same until now. The body of the document signed by Pico is in the handwriting of Governor Pico—Pio Pico was in Los Angeles in February, 1846, the time when said document bears date, as witness understood. Witness himself was in Monterey.

On the same day H. W. Halleck was called on behalf of the Government. [*Dep. in continuation of that of Manuel Castro, Aug.* 29, 1853] Testifies that he was formerly keeper of the records in California, is acquainted with the handwriting of Pio Pico, formerly Governor of this State, has seen Pico write his name and has had correspondence with him. This signature does not look like his signature. Pio Pico writes his name in different ways and his signatures at different times differ from each other very much in appearance. Has compared his different signatures in his presence, and he told witness they were genuine, all of them, though they differed very much from each other. This seems to have been written with a very bad pen, and although differing from his ordinary signature, it may nevertheless be genuine. His handwriting differs more at different times than that of any other Governor of California witness has ever seen; thinks the body of the document signed by Pio Pico is in the same hand-

writing with the signature. On cross-examination he states that he saw Pio Pico write his name on a number of occasions within a year and had official correspondence with him in 1848.

Wm. A. Richardson (deposition Aug. 30, 1853), testifies that his residence is in Marin county, and that he has lived in California for 31 years. The Expediente or Document marked " A", annexed to the deposition of Manuel Castro is genuine ; the signatures of Jose Duarte, Ignacio Pacheco, Timoteo Murphy, Fernando Feliz, of Manuel Castro, who was Prefect of the District—of Francisco Guerrero and of Pico are genuine. The last is the signature of Pio Pico, formerly Governor of California. Has often seen each of them write his name and has had correspondence with them. Timoteo Murphy was Justice of the Peace and Administrator of the Mission of San Rafael, in the present county of Marin ; said Murphy has been dead about eight months.

John Foster, (deposition Nov. 8, 1854)—Resides in Los Angeles county, California, and has lived in California for 20 years. Has known Pio Pico, former Governor of California, during the same period. Pio Pico is the brother-in-law of witness. Has had frequent and continued correspondence with him since 1839. Also has held situations under him. Has frequently seen Pio Pico write, and is acquainted with his handwriting and signature ; the signature and rubrica of Pio Pico on the fourth and last written *folio* of the Document, marked " P. L," is the true and genuine signature and rubrica of said Pico. The body of the order in the Spanish language, preceding and to which the signature is affiixed, is also in the handwriting of said Pico, who was Governor of the Department of the Californias at the time specified in the aforementioned order, viz. : February 18, 1846. On cross-examination, witness states that Pico's handwriting was

not perfectly uniform, but was always such as to be recognized. At times Pico was nervous.

J. J. Warner (deposition Nov. 8, 1854) has resided in San Diego and the adjoining county of Los Angeles for more than 20 years. Is acquainted with the signature of Pio Pico, former Governor of California, having frequently seen him write during the past 20 years, during which period witness has been acquainted with him. The signature and rubrica of Pio Pico on the fourth and last written *folio* of Document marked "P. L", "Exhibit in the Deposition of John Foster," are the true and genuine signature of said Pico. The document preceding, and to which the signature is affixed, being an order in the Spanish language, is also in the handwriting of said Pico.

Ignacio Pacheco (deposition Dec. 20, 1854) resides on his Rancho in Marin county. From the year 1826 until about the year 1846 was second Alcalde or Judge of San Rafael. Timoteo Murphy was First Alcalde or Judge thereof. Knows the land called Buacochá, well, it is situated in Marin county, near his own Rancho, and is bounded by the Ranchos of Bartolo Bojorquez, Fernado Feliz, Juan Martin, Juan Miranda and the Indian Camilo. Examines the document marked "A," and also "P L. Exhibit in the Deposition of John Foster, Nov. 8, 1854"—is well acquainted with the signatures of Bartolo Bojorquez, Juan Martin, Fernando Feliz, Camilo and Timoteo Murphy, on the second page of said Document, and of Jose Duarte on the first page thereof. Saw said signatures written in his presence, when witness himself signed his name upon the said second page. The name of Timoteo Murphy on the third page is also the true signature of said Murphy. The signature of Francisco Guerrero is also genuine. The signatures of Manuel Castro, who was prefect at the time of the dates mentioned in said Document are

also genuine. The signature of Pico, (meaning Pio Pico, former Governor of California) is genuine. Witness knows their handwriting well, has seen all those write, whose signatures appear in said Document and those whose crosses are affixed in said Document he saw affix the same. The body of the writing which appears on the 1st, 2d, 5th and 6th pages of said Document is in the handwriting of Antonio Maria Osio, who now resides in Lower California. The signature of Maria Teodora Peralta upon the 6th page was written by said Osio for her, at her request, made in witness' presence, and on witness' order that he (Osio) should sign her name thereto for her; knows Osio's handwriting well. Jose Duarte, whose name appears on the 1st page, is the son of said Maria Teodora Peralta.

Cayetano Arenas (deposition April 3, 1857.) was a writer or clerk in the Government Secretary's office when Pio Pico was Governor. At that time witness resided at Los Angeles. Recollects about the grant to Maria Teodora Peralta, recollects the name of the place, Buacochá, near San Rafael, and recollects about the Expediente, which was for a Sobrante. Has seen the Documents or Expediente in the office of the United States Surveyor General, and they are the original and genuine papers; the signatures of Manuel Castro and Pio Pico are genuine.

Jose Matias Moreno (deposition May 3, 1856 and May 28, 1859.) held the office of Secretary to the Government of the Department of the Californias from May 1st, 1846 until the Mexican Government ceased in California; Pio Pico was Governor during all that period and had been so for a long time previously. Witness then resided mostly in Los Angeles. Examines the Expediente in this case, marked "A. Thompson Campbell," and recognizes it to be the same which was formerly in the Government Secretary's office at Los Angeles, while wit-

ness was Secretary. The Decretal order which is written at the end of the said Expediente in these words :

"ANGELES, Febro 18 de 1846.

Estiendasele el titulo que le asegure la propriedad al interesado. PICO."

Witness recognizes to be in the handwriting of Governor Pio Pico, and signed with his genuine signature and rubrica. Has often seen him write and is well acquainted with his hand writing, signature and rubrica. On cross-examination (May 28, 1859), witness states that the "P" in Pico's name, affixed to said Decretal order, is a little different from that which he generally made, but still believes it to be his genuine signature. The signature is badly written,but is positive that the words themselves are in Pico's handwriting. Has some doubt as to the rubrica. Rubricas are generally the same, but may be altered at pleasure. Sometimes they are made carefully and well, and at other times in a careless and rapid manner.

And lastly, we have the testimony of Governor Pico himself, (deposition, September 9, 1859). He testifies that he was Governor of California from the end of 1844 until August or September 1846. That the portion of the Document or Expediente marked "A" "Thompson Campbell," on the 8th page of said Expediente in these words, viz.:

"ANGELES, Febro 18, 1846.

Estiendasele el titulo que le asegure la propriedad al interesado. PICO."

are in his handwriting, and the signature and rubrica appended are his own signature and rubrica. On cross-examination he states that he has no recollection of having signed said Expe-

pediente, except from seeing his handwriting, but is sure that he did write said decree and sign it. Believes he issure when he signed it.

AMENDMENT OF PETITION.—While the case was pending before the United States Board of Land Commissioners, by leave thereof, the affidavit of Maria Bernarda Duarte de Valencia, daughter of said Maria Teodora Peralta, was filed therein, setting forth that the petition in said case to said Board was drawn up and filed in misapprehension of the facts therein—that at the time of filing said petition the said Maria Teodora was deceased—she having died previously, to wit: during the month of November, 1850, leaving the deponent and others named in said affidavit as her heirs—that Mariano Duarte, husband of said Teodora died intestate during the year 1847—that a grant of said land had in fact been issued to said Maria Teodora by said Governor Pio Pico—that said grant and also a *diseño* of said land and a certificate of giving possession thereof, were, with said expediente, formerly in possession of her said mother, said Maria Teodora,—that diligent but unsuccessful search had been made therefor, and that the same had become lost or destroyed.

The said Board thereupon permitted the claimants to file an amended or supplementary petition conformable to the facts stated in said affidavit, and to introduce secondary evidence as to the contents of said grant.

GRANT,—Manuel Castro (Deposition, January 7, 1855,) testifies that in the latter part of the year 1845, Maria Teodora Peralta desired him to obtain from the Government a formal grant to her of the land called Buacochá. He applied to the Govern-

ment therefor in her behalf, and forwarded to the government the application and the papers contained in the Expediente marked "A" "Thompson Campbell." Witness sent the documents from Monterey to the Government at Los Angeles, about during January 1846.

Cayetano Arenas (Dep. April 3, 1857,) testifies that in part of 1844, all of 1845, and part of 1846, he was a writer in the Government Secretary's office at Los Angeles; that the Governor ordered the issuing of grants and they were ordinarily written out by the Secretaries or by the employees of the office and forwarded by the Secretaries. Never saw Maria Teodora Peralta, but knew her by reputation. Knows of a grant to her during his term of office which was written out by the Secretary himself, and sent to the Prefecture to be delivered to the grantee. The grant was for a tract of land containing some one and a half or two leagues, situated somewhere near San Rafael. Knows of his own knowledge that the same was issued, because it was an unusual thing to issue grants to women; knows of only one or two grants of that kind to have been issued. Has seen the Documents or Expediente in the U. S. Surveyor General's office, and they are the original and genuine papers. Recollects the name of the land was Buacochá. On cross-examination, witness gives a description of the Expediente. The Petition was for a Sobrante; knows also about this grant of his own knowledge, because it was one of the first grants made out after Moreno became Secretary. Witness saw the grant when it was being written out in the Secretary's office at Los Angeles. It had the two signatures of Governor and Secretary. The grant was sent by the Secretary to the Prefecture by the public post from Los Angeles to Monterey. Does not know into whose hands it fell or what became of it.

Moreno (Deposition May 3, 1856 and May 28, 1859) was Secretary of the Mexican Government of California from May 1, 1846 until the Mexican Government ceased therein. Pio Pico was the Governor thereof during that period. All grants of land passed through witness' hands, and were either written by him or by his clerks, under his supervision. Never knew Maria Teodora Peralta personally. Remembers that a grant of land was made to her by the Government. The land was a Sobrante named Buacochá. The Expediente was forwarded to the Government by the Prefect, Manuel Castro. Witness himself made out the grant in accordance with Governor Pico's Decretal order written at the end of said Expediente. It was like other grants issued where the grantee had previously been in possession of the land granted ; by it the said Sobrante was granted to Maria Teodora Peralta, according to the description thereof in the Expediente. The grant was duly executed by the proper officers, viz. : by Governor Pico and by witness as Secretary, and was despatched to the grantee. Recollects this grant from several circumstances : Grantee belonged to a family well-known in California : her grant was one of the first made after witness became Secretary : it was also an unusual thing to grant lands directly to a woman.

Maria Bernarda Duarte de Valencia, (Dep. June 17, 1857), daughter of said Maria Teodora Peralta, states the number and names of her mother's children and identifies the filed tabular statement of the family as it now exists. Has no interest in said land ; knows the Rancho of Buacochá granted to her mother ; has seen the documents pertaining to the title of said Rancho. The grant was made by Governor Pio Pico. Has seen the grant in possession of her mother ; the grant was lost, as also the diseño. On cross-examination witness states that the grant was

not fastened to the other papers. The grant was for the land called Buacochá, a Sobrante, containing something like two leagues, more or less.

Jose Ramon Mesa (Deposition March 27, 1857) : lives in Marin county, California. Knows the land called Buacochá. It is bounded by the Ranchos of Juan Martin, Bartolo Bojorquez, Camilo and Fernando Feliz, and by witness' own Rancho and that of Miranda ; knew Maria Teodora Peralta during her life ; knows and has heard and seen that she received a grant of said land from Governor Pio Pico, in the year 1846 ; was present when she received the grant from the hands of Timoteo Murphy, the Alcalde of San Rafael : was present when said Alcalde came to her house and told her that he had good news for her, and gave to her the grant for said land from the Government. Her title was a grant of a league and a half, more or less, between the Ranchos above-named. Heard the document read at that time by the son of the grantee ; there were present at the reading thereof the said Timoteo Murphy, the said grantee, her son who read, and witness. Witness being a neighbor and his rancho adjoining Buacochá, he was anxious to know as to the title; the land so granted was a Sobrante. On cross-examination, witness states that he is pretty certain that the grant was so received by said grantee in 1846, before the Americans came. The title had a seal on it like other Government titles. It was signed by Governor Pio Pico, and witness thinks by the Secretary Moreno. At the same time witness saw and heard read the Expediente, to which there was also a diseño attached.

Boundaries and Extent.—According to the description contained in the Expediente, the place asked for and claimed therein, was called Buacochá, a Sobrante of ungranted but grant-

able land, lying between and bounded by the Ranchos of Bartolo Bojorquez, Fernando Feliz, Juan Miranda, Juan Martin, and the Indian Camilo, and containing somewhat less than two leagues of land.

According to the formal grant or *titulo*, as proven by the witnesses Arenas, Moreno, Valencia, and Mesa, the grant was to the said Maria Teodora Peralta of the tract of land called Buacochá, situated near San Rafael, being a Sobrante, containing one and a half or two leagues of land, pursuant to the description in the Expediente.

By reference to the Records on file in the office of the Clerk of this Court—to the returns of survey on file in the office of the U. S. Surveyor General for the State of California, and to the same on file in the General Land office of the United States, it appears that the Rancho of Bojorquez is named "Laguna de San Antonio;" that of Miranda "Arroyo de San Antonio;" that of Camilo, "Olompali;" that of Martin, "Corte de Madera de Novato;" and that of Mesa, "Sulajulle". It further appears that the Sobrante tract of land or Rancho of Buacochá, claimed in this case, instead of containing one and a half or two leagues of land, has been cut down to about half a league, as may be seen by the accompanying map or plan from the office of the said U. S. Surveyor General.

Possession, Occupation and Cultivation.—The proof upon these points is, we submit, conclusive. Manuel Castro (Dep. Aug. 29, 1853,) testifies:—About the latter part of the year 1845 he passed through Yerba Buena to Sonoma, by way of said Rancho, Buacochá, going and coming, when he stopped a part of a day there, and found there said Maria Teodora Peralta with her

family of children and servants, living in a house built thereon. They then cultivated some of the ground and had some cattle there. Witness saw, on that occasion, some three hundred head of cattle on said Rancho, and some twenty or thirty horses. There were also corrals on the place.

Wm. A. Richardson (Dep. Aug. 30, 1853). Knows the Rancho of Buacochá, well. It was occupied by Maria Teodora Peralta, during her life time, that is, from 1844 until her death, about two years ago. She had a house on the Rancho, built by her son in 1844, in which she lived. They had cattle on said Rancho and cultivated about fifty acres of it.

Ignacio Pacheco (Dep. Dec. 20, 1854,) shows that Maria Teodora Peralta lived with her family upon the said Rancho of Buacochá, from about 1844 until her death, about three years previous to the said date of his testimony, when she died of Cholera. Her heirs have occupied the same since her death to the present time. A house was upon said land and occupied by said Teodora and her family in about 1844, and a house has been there ever since. The family cultivated a part of the land, and had cattle and horses upon it ever since their occupation thereof. Witness himself gave possession of said land to the said Maria Teodora Peralta in his official capacity as Second Alcalde or Judge, at the time of the concession. Her son built a house for her there in 1845.

The witness Valencia (Dep. June 17, 1857,) testifies that her mother, the said Maria Teodora, received provisional possession of said Rancho of Buacochá, more than a year before the issuing of the formal grant or *titulo* thereof to her, and that the family continued to occupy the same until the year 1856, when the house was destroyed by squatters.

The witness Mesa (Dep. March 17, 1857) testifies that he knows the said land to have been occupied by the said Maria Teodora Peralta and her family since 1845, and until the squatters knocked down the house last year, viz: until during 1856. The land was a Sobrante, and was occupied by her provisionally and by consent of her neighbors, perhaps two years previously to the issuing of the formal grant or *titulo*. Witness was one of the grantee's neighbors and knew her, and knew the land granted and the circumstances attending her reception of the said papers, and saw the expediente in her possession and heard it, as also the grant, read, at the time when the First Alcalde, Timoteo Murphy, delivered to her the papers in 1846, which he says was before the Americans came.

THE ALVISO CASE.—We insert, for purposes of comparison, a concise statement of the facts and proofs in the case of the United States vs. José Antonio Alviso (confirmed 23 Howard, 318) as the same appear of record in the office of the Clerk of this Court, viz:

José *Maria* Alviso petitions Governor Alvarado, March 1838 for a grant of two leagues of land called Cañada Verde y Arroyo de la Purisima, to subject his petition to the customary proceedings, and, meanwhile, to give him permission to occupy the same provisionally. On the same day, the Governor, by his marginal order, refers his petition to the Administrator of the Ex-Mission of San Francisco de Assis, and gives petitioner leave to occupy the land provisionally, if reported vacant. In June 1839, more than a year afterwards, José *Antonio* Alviso petitions the Prefect for the same place, without stating the extent thereof, and thereupon the Prefect permits him to occupy the said place provisionally. In April 1840, the Administrator to whom the Governor had referred the petition of José *Maria*,

more than two years previously, reports the land to be vacant. Immediately after this report, José *Maria* assigns his interest in the land to José *Antonio*. Lastly appears the certificate of Castro, dated Monterey, April 1846, to the effect that, while he was Prefect in 1840, José *Antonio* Alviso had asked for a grant of the same place of Cañada Verde y Arroyo de la Purisima to the extent of *half a league*. But there is no grant or archive evidence in the case. The only documents therein are produced by the claimant.

These Alviso documents are incomplete, and show certain unexplained peculiarities as to conflict of parties and discrepancy in the quantity of land asked for, while the proofs show that the party who obtained permission to occupy, never, in fact, took possession, but, without consent of Government, transferred to another his naked privilege to occupy.

Proof of the Alviso occupation rests solely upon the testimony of two witnesses—Sanchez, the said Administrator, and one Marantes, a herdsman of the claimant. The former states that José Antonio Alviso occupied the land and had a house upon it before the Americans came. The latter states that Jose Antonio Alviso had some cattle and two small cabins on the land in 1840; that in 1843 he built a wooden house and had twenty acres fenced in and under cultivation, and finally, in 1845, moved his family into said house.

The witness, Marantes, says the family resided on the land fourteen years. This is clearly an error. Marantes himself says Alviso began pasturing his cattle thereon in 1840, and that his family did not go to live upon the land until 1845. Now, Marantes' deposition was taken February, 23, 1853, at which time the occupation of Alviso, with his cattle, was less than thirteen years, and, with his family, less than eight years.

Here it may appositely be noted that, in the case at bar, the Expediente and testimony show that the proceedings to obtain possession of and title to Buacochá were consistent and continuous, without *laches*—without conflict or change of parties or discrepancy of claim—with the knowledge, favorable report and action, and consent of the officers of the government and the neighboring owners—with *bona fides* evident in every step of the petitioner and grantee, who was a well known and respected resident and native of the very soil, having admitted and pressing meritorious claims upon the benevolence of the government. That she received and held provisional possession of the land in question from and after the month of June, 1845. That, in the Summer or Fall of the same year, 1845, and for some time previously thereto, she had a dwelling-house, corrals, etc., upon said land, which she occupied, improved and cultivated, and where she resided with her children and servants, pastured her cattle, etc. That, thereafterward, without interruption, and in good faith, she and her children and heirs continued to possess, occupy, and cultivate the said premises as the permanent family home, under a recognized and well-known claim of title, for a period of upwards of eleven years, and until the family house was destroyed by squatters in 1856—during the pendency of these proceedings.

In the Alviso case, the occupation by the family began in the same year, 1845. And thus, in both cases, the essential purpose and condition of Colonization Grants were complied with, at or about the same time, and with equal *bona fides* and continuity of possession and claim.

DECISIONS AND ARGUMENT.

DECISIONS OF THE BOARD OF LAND COMMISSIONERS.—On referring to the Opinion of said Board in this case, we find that Appellants' claim to said Buacochá was held not to be valid upon these two grounds only, viz.:

1st. That there was no proof of the issuing of a formal grant or titulo.

2d. That there was no satisfactory proof of any Juridical measurement and segregation of the land.

To the first point, we answer: The Board, in the same opinion, *admits* the due and satisfactory proof of the Expediente with the Decretal Order of Governor Pio Pico to issue the titulo to the Petitioner, and *admits* the due and satisfactory proof of the occupancy and cultivation of the land by Claimants and the *bona fides* of their intentions. This admitted state of facts, Appellants contend, fully covered the ground of objection and constituted such a controlling equity in their favor as to entitle them to a confirmation, without proof of the issuing of a formal grant or titulo.

To the second point, we answer: All the proofs in the case show that the land claimed is Sobrante. No Juridical measurement, or segregation thereof, was necessary or could be made until the boundaries of all the colindantes were determined. Under the ruling of the Board, on this point, every claim or grant for Sobrante lands must have been rejected. In the case at bar, the locality and boundaries are established as definitely as could be done *before* the survey of the coterminous Ranchos. Wherefore Appellants contend that this ground of objection was wholly untenable, and no bar to confirmation.

DECISION OF THE DISTRICT COURT. — On referring to the Opinion of the District Judge, rendered in this case, we observe that some. at least, of the points of difficulty suggested or stated by him appear to have arisen from a certain misapprehension in regard to the *facts proved*—and to the facts *as proved*, in and by the Record.

1. The District Court says that there is no reason to doubt the genuineness of the papers in the case, except the Order of the Governor that the title issue—and that this Order and the signature thereto are evidently in Pico's handwriting; but states a difference between such signature and other signatures of Pico, and also a resemblance thereof. particularly in the form of the "P," to his mode of signing at a later period.

We answer: By this, the *genuineness* of the Expediente in the case, including said Order, is, strictly speaking, admitted. This admission is not, we apprehend, weakened by the suggestion of a difference between such signature and others of Pico's signatures. The witness, Foster, on cross-examination, says that, at times, Pico was nervous and his handwriting not uniform. Moreno, on cross-examination, says that the "P" in Pico's name is a little different from that which he generally made, and that the signature is written badly. While, Halleck, a witness called on behalf of the Government, says that neither the handwriting nor signature of said Order look like Pico's; that the whole seemed to have been written by the same person with a bad pen; that Pico's signatures differed very much from one another; that witness had compared a great many of these diversely made signatures in the presence of Pico himself, when Pico had acknowledged them all to be genuine—and that this signature *may be genuine*. The testimony, therefore, is

consistent with the difference of signature alluded to—a difference that, fairly considered, stamps such signature, fully proven to be genuine and authentic. with the unconscious marks of honesty and good faith.

But, what warrant has the District Judge for stating that the signature in question resembles Pico's mode of signing at a later period? None in the proofs. We appeal to the Record. There is not a particle of testimony to show that the signature, appended to said Order, resembles Pico's signature at a later period any more than at an earlier or contemporaneous period. If any inference is to be drawn touching the point, then, we contend, the only possible inference comes from the testimony of the Government witness, Halleck, and is *against* the imputation so gratuitously made. For instance, this witness, on cross-examination, states that he had seen Pico write his name on a number of occasions within a year, and had had official correspondence with him in 1848. Still the witness, though called, as we may say, solely as an expert on behalf of the Government, could not detect any resemblance between said handwriting and signature of Pico—*admitted and proven to be genuine*—and Pico's later writing and signatures wherewith witness was personally, practically, and most familiarly acquainted.

It is evident enough that the District Judge's theory of the case turns upon this very assumption—and thus a *fact assumed* is made to outweigh and control the *facts proved* in the case. Against this we most respectfully but firmly protest, and ask that we may be judged by our Record and upon the principle that we be held to have acted honestly and in good faith until the contrary be legally and properly shown.

In closing our remarks upon this point, we submit, that all

the testimony in the case goes to establish the undoubted integrity of the documentary evidence therein. The Prefect, Castro, swears that he forwarded the Expediente from Monterey, in January, 1846, to the Government at Los Angeles. The Clerk, Arenas, and the Secretary, Moreno, swear that they saw the Expediente in the Government Secretary's office at Los Angeles in the Spring of 1846 with said Order of Pico written thereupon. And Governor Pico himself testifies to the effect that he wrote said Order upon said Expediente at the time and place named therein. The testimony of these witnesses and of the witnesses Richardson, Pacheco, Foster and Warner, stands unimpeached. Neither is there anything improbable or inconsistent in the state of facts thus proved. Nor is there anything, thus far, at least, to be explained or accounted for.

2. The District Court also says that no explanation is offered of the circumstance that the Expediente is found in the Claimants' possession, and thereupon suggests a state of facts totally at variance with the proofs in the case, but consistent with the erroneously assumed *fact* of the District Judge, as to Pico's signature.

We answer: Explanation of this circumstance is not entirely wanting, derived from the testimony in the case, from the condition of the country at the time, and from the analogy of numerous other cases, the claims wherein the Government of the United States, by its Courts and highest Law Officers, have declared to be genuine, and entitled to Patent.

The proofs in the case show, we submit, the genuineness and authenticity of the Expediente in evidence; show that the formal grant, or titulo, was duly made out in pursuance thereof and forwarded and delivered to the grantee herself in her own

house, built for her by her son, upon the very land so asked for, so granted, and so possessed, occupied and cultivated by her and her children and heirs, and now claimed by the Appellants herein. The witness, Mesa, who testifies to the delivery of the grant to the grantee, Maria Teodora, by the first Alcalde, Murphy, [who, the testimony shows, died previously to the filing of the petition herein before the Board of Land Commissioners] swears, on cross-examination, by the United States District Attorney, that, at the same time with such delivery of said grant, he also saw and heard read the Expediente—and that this was in 1846, before the Americans came. We show *bona fides* in every step taken by us; we show *bona fides* and continuity in our actual possession, occupation and claim. And we submit, therefore, that we are justly entitled to the benefits of the fair and legal presumptions arising therefrom.

Besides, some explanation may reasonably be found in the irregularities incident to the warlike and revolutionary movements, set on foot in California, in the Spring of 1846, which had already, in the months of May and June of that year, assumed an attitude threatening the dissolution or overthrow of the then existing Government there. This is historical fact and known to this Court. Now the probability is that the Secretary, when the grant was made out, placed it with the Expediente—one inside the other, as is very commonly done with folded papers in office practice—and then, afterwards, in the hurry of despatching business, enclosed and forwarded the same, thus forming one package, to be delivered to the grantee.

This explanation is not far-fetched or overstrained. The custom of retaining the Expedientes in the Archives seems to have been honored almost as much in the breach as in the ob-

servance. The fact is indisputable, account for it as we may, that in numerous cases, some of which are set forth below, either the Expedientes were never filed in the Archives, or else they were returned purposely or carelessly to the grantees, and this too, when the country was tranquil and the Government administered without fear or disturbance. With this established fact of the absence of regular and systematic registry as herein shown, it may be confidently supposed that if any Mexican colonist, having the meritorious qualifications possessed in the premises by Maria Teodora Peralta, had come forward and produced before the Mexican authorities, her duly proven Expediente, with the like ample and unquestioned proofs of bona-fide and continuous occupation and cultivation of the land claimed, she would not, for want of such defects of record, have been denied the legal confirmation of her rights.

Finally, in relation to this point, we propose to show that the case at bar does not occupy an anomalous position. For example: in "United States v. Reading, 18 How,." the record shows that the Expediente is found in the possession of and produced by the claimant with a grant. And by reference to Hoffman's Reports, Appendix, *passim;* and to the Archives and Records, we find as follows, viz.:

* 19, 44, N. D. United States v. Cazares, claim for Cañada de Pogolomé, 2 square leagues in Marin county; confirmed by District Court and appeal dismissed. Patented. No archive evidence. Expediente produced by claimant, also grant.

109, 347, N. D. United States v. Fernandez, claim for four square leagues in Butte county, confirmed by District Court and appeal dismissed. No archive evidence. Expediente produced by claimant, also grant.

119, 130, N. D. United States v. Briones, claim for La Purisima Concepcion, one square league in Santa Clara County; confirmed by District Court and appeal dismissed. No archive evidence. Expediente produced by claimant, also grant.

* The first number is that of the Land Commission; the second number is that of the District Court. N. D. stands for Northern District, and S. D. for Southern District.

147, 301, N. D. United States v. Covillaud, et. al., claim for Honcut, seven square leagues in Yuba county; confirmed by District Court and appeal dismissed. No archive evidence. Expediente produced by claimant.

148, 228, N. D. United States v. Higuera, et. al.. claim for Los Tularcitos, in Santa Clara and Alameda counties; confirmed by Commission and appeal dismissed. No archive evidence. Expediente produced by claimants.

158, 351, N. D., United States v. Thompson, claim for eight square leagues in San Joaquin and Stanislaus counties; confirmed by District Court, and appeal dismissed. Patented. No archive evidence. Expediente produced by claimant, also grant. No possession.

182, 367, N. D. United States v. Lassen, claim for Bosquejo, five square leagues in Tehama county; confirmed by District Court and appeal dismissed. No archive evidence. Expediente from claimant.

210, 255, N. D.. United States v. Bocle, claim for La Carbonera, one half square league in Santa Clara county; confirmed by Commission, and appeal dismissed. No archive evidence. Expediente, with marginal grant, produced by claimant.

265, 240, S. D., United States v. De La Guerra y Lataillade, claim for Rancho La Zaca in Santa Barbara county: confirmed by District Court, and appeal dismissed. No archive evidence. No Expediente or grant produced, but testimony introduced to show existence, loss and contents thereof.

271, 333, S. D., United States v. Gutierrez, claim for El Potrero de San Carlos, one square league in Monterey county; confirmed by Commission and appeal dismissed. No archive evidence. Expediente in possession of and produced by claimant. No grant, but testimony introduced to show the existence, loss and contents thereof.

299, 364, S. D., United States v. Den claim for San Marcos, eight square leagues in Santa Barbara county; confirmed by commission and appeal dismissed. No archive evidence. No Expediente, but a grant. No possession.

318, 305, S. D., United States v. Felis, claim for San Francisco, eleven square leagues in Santa Barbara county; confirmed by Commission and appeal dismissed. Diseño alone found in the archives. No Expediente, but a grant.

352, 82. N. D., United States v. Sanchez, claim for San Pedro, two square leagues in San Mateo county; Confirmed by Commission and appeal dismissed. No archive evidence. Grant produced.

372, 353, S. D., United States v. Abila, claim for Las Cienegas, one square league in Los Angeles county; confirmed by Commission and appeal dismissed. No archive evidence. No Expediente. No grant, but testimony introduced to show the existence, loss and contents of a certificate of concession, with occupation.

417, 134, S. D., United States vs. Aguilar, claim for lot near San Gabriel in Los Angeles county; confirmed by District Court and appeal dismissed. No archive evidence. No Expediente, but a grant.

419, 136, S. D., United states v. Silvas, claim for lot near San Gabriel in Los Angeles county; confirmed by District Court and appeal dismissed. No archive evidence. No Expediente, but a grant.

420, 137, S. D., United States v. Rios, claim for lot near San Juan Capistrano, in Los Angeles county; confirmed by District Court and appeal dismissed. No archive evidence. No Expediente. No grant, but order for provisional grant, with occupation since about 1846.

455, 171, S. D., United States v. Reid, claim for Huerta de Quati, in Los Angeles county; confirmed by District Court and appeal dismissed. Patented. No archive evidence. No Expediente, but a grant.

462, 312, S. D., United States v. Alvarado, claim for Rincon del Diablo, three square leagues in San Diego county; confirmed by District Court and appeal dismissed. No archive evidence. Grant and judicial possession.

478, 371, S. D., United States v. Baldez, claim for San Antonio, one square league in Los Angeles county; confirmed by Commission and appeal dismissed. No archive evidence. Expediente in possession of and produced by Claimant. No grant produced, but testimony introduced to show the existence, loss and contents thereof.

482, 146, S. D., United States v. Vejar, claim for Boca de la Playa, one and a half square leagues in Los Angeles county; confirmed by commission and appeal dismissed. No archive evidence. Grant.

504, 320, S. D., United States v. Gomez, claim for San Simeon, one square league in San Luis Obispo county; confirmed by District Court and appeal dismissed. No archive evidence. No Expediente, but a grant

537, 230, S. D., United States v. Briones de Lugo; claim for Paraje de Sanchez, one and a half square leagues in Monterey county; confirmed by District Court and appeal dismissed. No

archive evidence. Expediente produced by claimant, also a grant.

554, 356, S. D., United States v. Randall, et al., claim for Cañada de la Segunda, one square league in Monterey county; confirmed by District Court, and appeal dismissed. Patented. No archive evidence. Expediente produced by claimants. Grant by the Prefect under direction of the Governor.

559, 409, N. D., United States v. Howard, claim for San Mateo, two square leagues in San Mateo county; confirmed by Commission, and appeal dismissed. No archive evidence. No Expediente. No grant produced, but testimony introduced to show the existence, loss and contents thereof. No possession.

560, 352, S. D., United States v. Breen, claim for land in Monterey county; confirmed by Commission, and appeal dismissed. No archive evidence. No Expediente. Grant and possession previous to grant, but not judicial possession.

572, 298, S. D., United States v. Cocks, claim for one-fourth of a square league in Monterey county; confirmed by Commission, and appeal dismissed. No archive evidence. Expediente produced by claimant. Also a grant by Prefect approved by the Governor.

608, 280, S. D., United States v. Escamilla, claim for San Vicente by boundaries in Santa Cruz county; confirmed by District Court, and appeal dismissed. No archive evidence. No Expediente. Grant, June 16, 1846, and occupation since.

617, 373, N. D., United States v. Bernal et al., claim for Cañada de Pala, in Santa Clara county; confirmed by Commission, and appeal dismissed. No archive evidence. Expediente produced by claimants with marginal decree by the Prefect.

638, 233, N. D., United States v. White, et al., claim for Pala, one square league in Santa Clara county; confirmed by District Court, and appeal dismissed. No archive evidence. Documentary proofs produced by claimants.

668, 279, S. D., United States v. Bernal, claim for El Alisal, one and a half square leagues in Monterey county; confirmed by District Court and appeal dismissed. No archive evidence. Expediente produced by claimants, also a grant.

673, 206, S. D., United States v. Soberanes, claim for Sanjon de Santa Rita, eleven square leagues in Merced and Fresno counties; confirmed by District Court, and appeal dismissed. No archive evidence. Expediente from hands of claimant.

74, 421, N. D., United States v. Leese et al., claim for land in the City of San Francisco; confirmed by Commission and

appeal dismissed. No archive evidence. Expediente with grant produced by claimants.

565, 361, S. D., United States v. Butron et al., claim for Nativ'dad, two square leagues in Monterey county; confirmed by District Court and appeal dismissed. Note in the archives, but the Expediente, etc., produced by the claimants.

767, 413, N. D. United States v. Rico et al., claim for Rancheria del Rio Estanislao, eleven square leagues in San Joaquin and Calaveras counties; confirmed by District Court and appeal dismissed. No archive evidence. No Expediente produced, but testimony introduced to show its existence, loss, etc. A grant produced.

674, 277, S. D., United States v. Sanchez, claim for San Lorenzo, eleven square leagues in Monterey county; rejected by Commission, but confirmed by District Court and appeal dismissed. No archive evidence. Expediente and grant produced by claimant. The grant held to be invalid on account of its date, July 27, 1846—but without prejudice to the *bona fides* or strength of the claim. The Expediente in this last case contains the following order to issue title, viz.:

"ANGELES, Febro, 18 de 1846.

Estiendasele el titulo que le asegure la propiedad al interesado. PICO."

—being the same—*ipsissimis verbis*—with the order to issue title in the case at bar. Date, place, words, precisely the same.

We also cite, for convenience of reference, the following cases confirmed by this Court:

United States v. DeHaro's heirs. 22 How. 293. There was no archive evidence in the case and the Expediente therein, consisting of petition and marginal decree, produced by claimants.

United States v. Alviso. 23 How. 318. No archive evidence. Documentary evidence came from claimant.

United States v. Wilson. 1 Black, 267. No archive evidence. Grant July 10, 1846, held to be invalid. Claim rested upon the testimony of the witness, Bonilla—and the fact of possession.

We particularly call attention to the fact, that, in all the foregoing cited cases, the Expedientes, if produced at all, are found, *not in the archives*, but in the possession of the claimants,

who, at the same time, in many cases, produce also formal grants —and, in other cases, where the grants are not produced, introduce testimony to show the existence, loss and contents thereof.

3. The District Court also says, that in this case there is neither a grant nor archive evidence—refers to United States v. Castro, 24 How. 350, upon the question of secondary evidence —and then in this case draws an unfavorable inference from the fact that the Expediente is not found in the archives but in claimants' possession, and also from its erroneously *assumed fact* in regard to Pico's signature.

In answer, we submit, that the difficulty, suggested by the fact that the Expediente is not found in the archives, but is produced by claimants, is fairly met and explained, as before set forth, by the reasonable presumptions arising from the proof of our unquestioned *bona fides* throughout, from the very beginning; of the meritorious qualifications of the grantee; of the integrity of our documentary evidence; of its transmission to and reception from the government authorities; of the undoubted continuity of our possession and claim, accompanied by actual occupation and cultivation, as the permanent family home for a period of some eleven years, and under a well-known and recognized claim of title. It is also met and explained by the irregularity and want of system shown by said cited cases to have existed in the registry and record of Mexican land grants as aforesaid.—And it is also accounted for by the analogy of the numerous other cases hereinbefore cited, which show, unmistakably, the fact, that in many claims of undoubted *bona fides*, and merit, which have been held and declared, on behalf of the United States Government to be good and entitled to Patent, the Expedientes were, in some manner returned to the Mexican grantees, and thus were not found in the archives, but in the possession of the claimants

themselves, and by them produced before the Land Commission or United States District Courts, unauthenticated by any archive evidence.

Touching the remark of the District Judge, as to the suspicious appearance of the Order to issue title, we reply that such remark has, we submit, no warrant save in his previously *assumed fact* in regard to Pico's signature; that it is simply an inference drawn from a mistaken assumption, improperly introduced into his Opinion.

In the case at bar no formal grant is produced; but the existence, loss and contents thereof are, we submit, fully proven. In United States v. DeHaro's heirs, 22 How., 293, there was no formal grant, but a marginal decree or order of the Governor. In United States v. Alviso, 23 How., 318, there was simply the Governor's marginal order of reference with permission to occupy in case the land should be found vacant. In United States v. Wilson, 1 Black, 267, no documentary evidence was produced, but its existence, loss, etc, shown by the testimony of the Alcalde—the grant produced by claimant being held to be invalid because dated after the conquest.

By reference to the foregoing cases, cited and compiled from 1 Hoffman's Reports, etc., we find that in "265 241, S. D., United States v. De La Guerra y Lataillade," there, was neither Expediente nor grant produced, but testimony introduced to show existence, loss, etc. In "271, 333, S. D., United States v. Gutierrez," no grant was produced, but testimony introduced to show the existence, loss, etc., thereof. In "372, 353, S. D., United States v. Abila, no grant was produced, but testimony introduced to show the existence, loss, etc., of a certificate of concession. In "478, 371, S. D., United States v. Baldez," no grant was produced, but testimony introduced to show the

existence, loss, etc., thereof. In "559, 409, N. D., United States v. Howard, no grant was produced, but testimony introduced to show the existence, loss, etc., thereof. There was no archive evidence in any of these cases.

Again, as to the absence of archive evidence in this case: It is already well known to this Court that the book, called *Toma de Razon*, for the year 1846, is not found in the archives. But even conceding that such book were so found, and that the grant in this case were *not* registered therein, then, such absence of registry would not seem to be "conclusive exclusion" of such grant. For, in United States v. West's heirs, 22 How., 315, it is held that the "book called Jimeno's Index is not an authoritative proof of grants enumerated in it, or a conclusive exclusion of grants not so registered." And this, we submit, applies with even greater force to the *Toma de Razon*, which, judging from the one found in the archives, appears to have been kept with much less system and completeness than Jimeno's Index.

In the United States v. DeHaro's heirs, in the United States v. Alviso, and in the United States v. Wilson, before cited, as confirmed by this Court, there was no archive evidence.

Still further: By examining the foregoing statement of cases prepared from 1 Hoffman's Reports, appendix, etc., it will be observed that of two of them, only, is there any trace in the archives—that in all the rest there is no archive evidence whatever—and the title papers or *quasi* title papers, if produced at all, are found in the possession of and come from the claimants themselves.

The requisites to maintain title by secondary evidence, as laid down in United States v. Castro et al., 24 How., 350, are, we

submit, not applicable, except in a limited degree, to the case at bar, and where applicable thereto there is substantial compliance therewith: 1st. We show that the grant was obtained and made in the manner the law required, in the Spring of 1846; we show the loss and contents thereof; we produce the Expediente and establish its genuineness and authenticity; while the unwavering *bona fides*, the meritorious qualifications, and continuity of possession and claim, shown by petitioner and claimants, coupled with the analogy of numerous other cases, taken together, prove, or at least raise the violent presumption that such Expediente came into our hands honestly and through probable oversight or carelessness of the government official. 2d. As aforesaid, the book called *Toma de Razon*, for the year 1846, is not found in the archives. Even if found it would not be an authoritative proof.—United States v. West's heirs, 22 How., 315. The book called Hartnell's Index, made in 1847-'8, is not regarded as a Mexican record. —United States v. Knight's Administrator, 1 Black, 227. Besides Mexican officers will not be heard to contradict or *supply* records.—United States v. Neleigh, 1 Black, 298. 3d. We show possession of the land claimed, by provisional license, in June, 1845; and the grant being for a *Sobrante*, no "Judicial survey of the land could be made until the boundaries of all the colindantes were determined and the extent of the Sobrante ascertained." Besides, the land in question lies between and is bounded by certain, specified, previously-granted ranchos, and this gives the locality and boundaries with sufficient exactness. —United States v. Vaca et al., 18 How., 557. The "actual possession" by claimants and their "acts of ownership exercised" over the land claimed herein were open, bona fide, continuous and notorious. The proofs show that such possession

and occupation with cultivation were of long "duration, permanency and value."—United States v. Teschmaker et al., 22 How., 405–'6; and show, moreover, "the knowledge of the officers of the Government of the title claimed, and their acquiesence in the justice and legality of the claim."

In regard to the value of archive evidence in California land claims, we may add that a careful analysis and comparison of the cases confirmed by this Court, and of the cases wherein appeal has been dismissed in favor of claimants, as also of the archives themselves, show infirmities and irregularities of almost every conceivable character; that the registry or record of Spanish and Mexican land grants, in California had practically very little, if any, system, marked as it is, by so many evidences of inattention, unskillfulness, neglect, and omission—thus demonstrating the singular importance of the fact of bona fide occupation and cultivation of the land, whereby the true object of the colonization law is fulfilled and the claim and title of the colonist earned and made good.

4. The original petition in the case was filed before the Board of Land Commissioners in the name and behalf of Maria Teodora Peralta—a party who had died some three years previously—and stated that no formal title was issued, owing to the change of government. Upon these two points, the petition was subsequently, on affidavit of mistake and misapprehension, and by leave of the Board, amended. The District Judge discusses the improbability of the latter mistake, but omits to notice the former as in any manner improbable. Now the former, we submit, is, as a matter of fact and practice, the more prominent error of the two, about which there was much less likelihood of mistake being made—while the two taken together and

thus fairly judged leave no ground whatever for any supposition of the improbability of mistake having been made as to either.

But, we submit that, independently of a formal grant, we are, upon our Expediente and proofs of bona fide possession and occupation of said land, under recognized claim of title and ownership, fully entitled to confirmation herein; that, in fact, an indefeasible estate or title in and to said land vested in us by virtue of the Governor's said Decretal Order of February 18, 1846, accompanied and authenticated by our merits as colonists, by the scrupulous *bona fides* of our proceedings, preliminary and otherwise, and by our possession, occupation and cultivation of "duration, permanency and value." All these acts on the part of the petitioner and grantee and the government authorities mutually and reciprocally explained and verified each other and concurred in effectually separating from the public domain the land claimed herein, and in converting the same into the private property of the claimants. The change of flag found us fixed in the possession and enjoyment of that *status* of rights, which we have ever since continuously, diligently and in good faith sought to preserve and maintain, and by which, Appellants contend, the conscience of the Government of the United States is bound. DeHaro's case, 22 How., 293; Alviso's case, 23 How., 318; Wilson's case, 1 Black, 267.

5. The District Court also discusses the comparative merits of the Alviso case, and the case at bar, particularly upon the point of possession and occupation.

We refer to the facts and proofs in both cases, placed side by side.

In the Alviso case, the claim of possession, it is true, began in 1840; but the actual possession—inhabiting and use by the

family, as contemplated by the Colonization Law—did not begin or take place until the year 1845. Besides, the permission to occupy was given to José *Maria*, who never took possession. He transferred his naked privilege only to José *Antonio*. But it does not appear that the transfer was made with the knowledge or consent of the Government. Might not the motive which actuated the Governor, in the case of José *Maria*, have been entirely wanting in the case of José *Antonio?* And is not this suggestion somewhat corroborated by the fact that the Prefect certifies, in 1846, that José *Antonio* asked for the same place in 1840 to the extent of half a league only? We make these remarks with great respect and simply for the purpose of showing that an undoubted, meritorious case may be marked by certain unexplained peculiarities.

In the case at bar, the witness, Richardson, testifies that Maria Teodora Peralta occupied Buacochá from 1844 until her death in 1850; that she had a house and cattle on the rancho and lived there and cultivated about fifty acres of it. The witness, Pacheco, swears that said Maria Teodora lived with her family upon said rancho from about 1844 until her death; that since her death, her heirs have occupied the same; that a house was upon said land and occupied by said Maria Teodora and her family in about 1844, and a house has been there ever since; that the family have cultivated a part of the land, and had cattle and horses upon it ever since their occupation thereof; that witness gave possession of said land to said Maria Teodora in his official capacity as Second Alcalde at the time of the concession; that her son built a house for her there in 1845. The witness, Valencia, testifies that her mother, said Maria Teodora, received provisional possession of said rancho more than a year before the issuing of the formal titulo, and that the family con-

tinued to occupy the same until 1856, when the house was destroyed by squatters. The witness, Mesa, swears that he knows the said land to have been occupied by the said Maria Teodora and her family since 1845, and until the squatters knocked down the house in 1856; that she occupied the same provisionally and by consent of her neighbors for some time previously to her receiving the titulo. The Prefect, Castro, testifies that, in the latter part of the year 1845, he stopped a part of a day upon said rancho, and found the said Maria Teodora living in a house there with her family of children and servants; that they cultivated some of the land and had some three hundred head of cattle and some twenty or thirty horses, besides corrals, on the place, and that she desired him to obtain from the Government a formal concession to her of said land.

Now, we submit, that the parol testimony and the evidence furnished by the Expediente in the case, taken together, show that Maria Teodora Peralta began to occupy with her family the said land, in about the year 1844 — that in the month of June 1845, she made her petition to the Alcalde of San Rafael with the view of obtaining the said land — that the said Magistrate immediately called together her neighbors, and with them considered the subject matter of her petition, and declared by common consent that she might have and acquire said land — that then the second Alcalde, before whom, as well as the first Alcalde, these proceedings were had, made out and delivered the report and certificate thereof to the petitioner, and gave her, at the same time, provisional possession of the land in question.

That the object of such proceedings, before and by the said magistracy with the neighbors, was two-fold, viz: to lay the foundation for application to the Government for formal grant, and also to receive immediate provisional possession from the local

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authority, thereby insuring the present security of the petitioner and her future acquisition of a full and final title. That this is shown, in a measure, by the very nature of these local proceedings, which, though standing, it may be said, distinct and complete in themselves, yet relate to and are directly connected with her separate petition to the Prefect, and the subsequent successive orders, reports, decree, &c., in the premises.

That the fact of Maria Teodora Peralta's receiving said provisional possession as above indicated, is clearly shown by the following evidence and circumstances, viz; 1st.—The character of the said distinctive but relative proceedings before and by the said local authorities with the neighbors. 2d.—Her statement in her separate petition to the Prefect, made in November 1845, that in the previous month of June she asked said land *provisionally*, from the Alcalde of the place. 3d.—The testimony of the second Alcalde—who, it appears, chiefly officiated in the June proceedings, and in whose presence said separate petition to the Prefect was written—that he gave her possessession at the time of the concession. 4th.—The testimony of the witnesses, Valencia and Mesa, that she occupied the said Rancho under *provisional license* and by consent of the neighbors for some time previous to her reception of the grant in 1846. 5th.—The testimony of the Prefect himself that he was at her house on said rancho, in the Fall of 1845, and that she requested him to obtain for her a *formal* grant thereof from the Government—a request that, under the circumstances, has peculiar significance, including and presupposing, we suggest, an already existing and recognized right and claim in her own mind and in that of the Prefect, which right and claim only required a *formal* title to be rendered complete. All of which evidence and circumstances are, we submit, co-relative and corroborative, and particularly when

taken and considered together, demonstrative of the fact of provisional possession as stated.

We do not set up or claim, in this case, a formal, legal judicial possession and survey, which the District Judge himself states could not have been given, from the fact of the land claimed being a *sobrante* and dependent upon the previous determination of the boundaries of all the colindantes.

The Second Alcalde, Pacheco, testifies that he gave—not *Judicial* possession—but simply, "possession at the time of" the concession or grant. This witness does not anywhere speak of the formal grant or titulo, but proves the Expediente, occupation, etc., and particularly the proceedings had before him officially, in June, 1845, and the separate petition of Maria Teodora Peralta to the Prefect in November, 1845, written in witness's presence, wherein she recites her asking said land provisionally from the proper Alcalde in said month of June. The testimony of the witness, Pacheco, upon this point, is to be construed, in fairness, to mean what is probable, and what he undoubtedly had in his mind, namely, the possession given by him, in June, 1845, at the time when the local authorities and neighbors gave their consent to her taking the said land and obtaining a grant or titulo therefor from the Government –and *not* what would seem to have been then impossible, namely, the long and laborious proceedings of Judicial possession and survey of a yet undetermined sobrante.

It is incontestible that the fact of the possession, occupation and cultivation of said rancho by the grantee and her family, was brought home specially to the knowledge of the authorities of the Jurisdiction and also of the District, in the Summer and Fall of 1845. We submit that her said possession at that time,

and continuously thereafter with the knowledge and consent of the Government officers, as shown and authenticated by their positive acts, particularly in the issuing and delivery of the title papers to the grantee, confirmed and legalized her possession.

In conclusion, we submit, that from and after the said month of June, 1845, the said Maria Teodora Peralta and her family continued in the unquestioned possession and enjoyment of the said rancho of Buacochá. She and her children occupied, improved and cultivated the same, having their cattle, horses, buildings, and corrals thereupon. It was their permanent home. They were known, recognized and respected by the colindantes and neighborhood, generally, and by the Government officers, as the exclusive occupants and proprietors thereof under title. Such actual possession by her, and by her heirs after her death, was continuous and uninterrupted for a period of upwards of eleven years and until thefamily residence was rendered uninhabitable by violence in 1856—during the pendency of this case.

In view of all of which, we submit, that the decree of the District Court be reversed and that this Court confirm to the heirs of Maria Teodora Peralta and their successors in interest, the said land or Sobrante of Buacochá.

J. S. BLACK,

Appellants' Counsel.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

MARIA TEODORA PERALTA
vs.
THE UNITED STATES.

BRIEF ON BEHALF OF THE UNITED STATES.

JAMES SPEED,
Attorney General.
JOHN A. WILLS,
Special Counsel for United States.

1947

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

MARIA TEODORA PERALTA
vs.
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BRIEF ON BEHALF OF THE UNITED STATES.

We propose to consider the manner in which this claim was presented, and the testimony offered in support of it; and we expect to show that it is false, fraudulent, and destitute of foundation.

This claim was filed in the Land Commission on the 28th of February, 1853, in the name of Maria Teodora Peralta. She is represented to have begun by a petition to the alcalde to obtain through him a statement that the land was vacant. This statement she is said to have sent to the prefect with a petition for a grant of the land. This petition is referred by the prefect to the sub-prefect, and by him to the first judge of San Rafael, who, on the 29th of November, 1845, reports the land vacant. The prefect, on the 20th of December, 1845, recommends the application to the governor. Then follows an order in the handwriting of the governor, dated February 18, 1846, in these words: "Estien dasele el titulo que le asegure la propriedad al interesado," signed "Pico," which means: "Let a title be made out to secure the property to the interested party."

These papers were filed with the petition. There was nothing to show that they had ever been in the archives, where, if genuine, they ought to have been, nor to account for their production from private hands. The original petition for confirmation proceeded on the theory, *that the above order of Pico was equivalent to a grant;* that it had declared the claimant owner of the land, which was a misstatement of its effect; but it did not pretend that any title or grant other than that order had ever been made out; on the contrary, *it alleged that such grant was never issued, in consequence of the occupancy of the country by the Americans.*

Such were the allegations of the petition, and such the documentary evidence offered in support of it on the 28th of February, 1853, in the name of Maria Teodora Peralta.

Under this first aspect of the case several witnesses were examined. First, on the 29th of August, 1853, comes a deposition of Manuel Castro, to whom the papers filed with the petition are shown, called the *espediente*, and he says he recognizes it as a document which he has had before in his hands, all the signatures on which, his own included, are genuine; that he had signed the document as prefect of the second district, and Pico as governor; that after he sent the document to the governor he had not seen it till now. *But not a word did this witness now say of any further action of the government.* The theory of a *lost grant* had not yet been broached.

Manuel Castro, at this examination, testified to having passed by way of this rancho, going and coming between Yerba Buena and Sonoma, in the latter part of 1845; to having stopped there part of a day, and

found there the present claimant, with a family of children and servants, living in a house, cultivating some land, having 300 head of horned cattle, 20 to 30 horses, corrals, &c.

It is well enough to recollect in this connection that *the first measures* represented to have been taken by her to procure a grant are *dated* in *the latter part of* 1845, and that this same Castro, in November of that year, when the application for the land, supported by the statement of the alcalde and the consent of the colindantes, is said to have been sent to him as prefect, appears to have sent it back for an *informe* or report.

We proceed with our review of the testimony offered during this first phase of the claim.

H. W. Halleck, now General Halleck, was examined on behalf of the government, and doubted the genuineness of Pico's signature to the order at the end of the so-called *espediente*. Several witnesses were afterwards called to strengthen the proof of it. The deposition of William A. Richardson was filed on the 30th of August, 1853, those of John Foster and J. J. Warner on the 8th of November, 1854, and that of Ygnacio Pacheco on the 20th of December, 1854.

This latter deposition deserves attention. It was taken and filed *about a month before a new light broke upon somebody*, by reason of which the case entered upon its second phase. Ygnacio Pacheco says he is 48 years old; that from 1826 to 1846 he was first alcalde, and Timoteo Murphy was second alcalde of San Rafael; that the papers of the *espediente*, purporting to have been made in San Rafael, were made and signed in his presence. He describes Buacochá and

its boundaries; says that Maria Teodora Peralta lived on it with her family from 1843 or 1844 till *her death, of cholera, about three years ago;* and her family have lived there since; that she had a house and cattle, and cultivated land; and that he, as alcalde, had given her possession of the land. It is to be noted, that this alcalde, who represents himself as having taken so active a part in preparing the preliminary papers, and as having given Maria Teodora Peralta possession of the land, says nothing of any grant or of any document other than those found in the so-called *espediente.* We shall have occasion to refer to this testimony again in connection with subsequent depositions. We now remark only the singular fact first appearing in this deposition: that the supposed claimant, *Maria Teodora Peralta, had been dead all the time the claim was being urged in her name,* and in fact two or three years before the claim was filed. The act of 1851 seemed to contemplate *that claims should be presented by or on behalf of persons still in this world, and within two years from its passage.* This time allowed by the act had long since expired.

In what way the deceased Maria Teodora Peralta had managed to retain her three attorneys has not been disclosed in the record. *Their petition in her name was a mere nullity, and the time for filing a claim in the name of the heirs was gone.* Something must be done, and that speedily, for the days of the Land Commission were numbered and would soon expire. The happy thought of *amending* the petition from the other world presented itself. On the 23d of January, 1855, an affidavit of Maria Bernarda Duarte de Valencia was filed. In it she stated that Maria Teodora Peralta was

her mother, and had died in November, 1850, and that her husband, Mariano Duarte, had died in 1847 or 1848, both intestate. She set forth the names of the children and grand children who were heirs of the deceased Maria Teodora Peralta, she being one of them, and avers that the petition herein was filed February 28, 1853, *through the instrumentality of persons who did not properly inquire into the facts from such of the heirs as were acquainted with them;* that a grant or concession did issue in accordance with Governor Pico's order of February 28, 1846, and that said concession, and a map or *diseño* of the land, and a certificate of putting her in possession of it, had been formerly in the hands of Maria Teodora Peralta, which affiant had searched for and had not found, and therefore presumed to be lost.

Thereupon came a motion and order for leave to amend, and the amended petition was filed on the same day, January 23, 1855!! A similar device was resorted to in the Chaboya case, but without success. 2 Black's U. S. R., p. 593–595.

Were the Commissioners, or the district court, or is this court, invested with jurisdiction of this claim, under the act of 1851? Was any claim for it presented *in time?* The attention neither of the Commissioners nor of the district court seems to have been called to this question of jurisdiction in the progress of the cause.

The date of the death of the so-called claimant probably never struck them, and was supposed, as a matter of course, to have been *subsequent* to that of a petition filed by three attorneys in her name.

The vague averment of the affidavit underlined by us, attributes the filing of that petition to the instru-

mentality of persons who did not properly inquire into the facts from such of the heirs as were acquainted with them.

There was a natural anxiety to escape from the admission of the utter nullity of this petition. It is treated as something real, but faulty and incorrect, and therefore to be *amended* by these heirs who know so much more about the facts than the ghostly petitioner.

We proceed now to examine the evidence by which these heirs endeavor to support these new allegations.

Prefect Manuel Castro is *immediately* examined *again*, and his second deposition filed on the 27th of January, 1855.

He says he forwarded the *espediente* to the government in January, 1846, for a concession; afterwards he visited Los Angeles on public business, inquired at the office of the secretary about this concession, and was told it had been issued and despatched to the interested party about April, 1846. How singular that this had not occurred to him in his deposition of August, 1853!

On this state of the evidence the claim was rejected by the Commissioners by their opinion and decree filed April 3, 1855.

On the 23d of October, 1855, the transcript was filed in the district court, and on the 16th of April, 1856, notice of an intention to appeal was given on behalf of the claimants.

On the 3d of May, 1856, a petition of appeal, filed in the name of the heirs, alleges *that a claim had been filed in time by Maria Teodora Peralta* for the rancho of Buacochá, &c. The heirs of age, with the exception of Maria Bernarda Duarte de Valen-

cia, had conveyed their interests, some of them to their attorneys, who thereby owned *half* the claim; others, to Maria Bernarda, who thus owned *one-third* of it; *four minor heirs* represented *the remaining* SIXTH PART. On the 9th of March, 1857, an affidavit is made to get the testimony of José Duarte, in order to prove the existence of the grant and map in the hands of Maria Teodora Peralta. This José Duarte was one of the heirs, who had sold his interest to his sister Maria Bernarda. His deposition was not taken; for what reason, does not appear. That of José Ramon Mesa was taken on the 17th of March, 1857. This witness says that he knows the land, his own rancho being one of those surrounding it; that he knew Maria Teodora Peralta when living; that he knew and had seen and heard that she received a concession from Governor Pio Pico, in 1846, of said land; was present when she received the concession from the hands of Timoteo Murphy, alcalde at San Rafael; was present when Timoteo Murphy called on D'a Maria Teodora Peralta at her house, and told her that he had good news for her, and he delivered to her her grant for said land; he, Timoteo Murphy, said he had received it from the governor, Pio Pico; the title was a *concession* of *a league and a half*, more or less, within certain ranchos mentioned by him; heard the document read at that time by José Duarte, son of Maria Teodora Peralta; the other persons present, besides these two, being only Murphy and the witness; was a neighbor and contiguous proprietor, and therefore interested to know if the title was good or bad; the land occupied by claimant and family since 1845; it was a *sobrante*, and *occupied by her provisionally with*

the consent of her neighbors. perhaps two years previous to the concession; saw the *espediente* at the same time he saw the title; heard it read; attempts to state what the *espediente* was composed of; the husband of Maria Teodora Peralta was not present; thinks he was dead. *This witness makes his mark to his deposition.*

If we turn to the deposition of Wm. A. Richardson, taken about the 30th of August, 1853, we find that *Timoteo Murphy died about eight months before*—that is, about the beginning of the year 1853. José Duarte was the only other living witness of the scene of the delivery of the grant so circumstantially described; and there was probably no danger of contradiction from him. But there is a little too much in the story of this witness. At the very time when, according to his story, the grant, fresh from the hands of the governor, in 1846, before the coming of the Americans, is produced by Murphy and read by Duarte, the unfortunate *espediente* and *diseño* are in their hands, and seen and read also. It is well known that the universal usage was CONTRARY to the delivery of the *espediente* with the grant. The official witnesses, Castro, Pico, Matias Moreno, Cayetano Arenas, all represent the *espediente* to have been forwarded to the governor; they could not otherwise account for the order written by him upon it, nor for the issuance of a grant. They say, also, that the *original espediente*, when a *titulo* or grant issued, *always remained in the archives.* Willing enough to do or say every thing in their power for the claimants, they could not contradict what the whole body of the archives proved. The witness, Mesa, does not say that Murphy received from the governor and delivered to the grantee both the grant

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and *espediente*, but at the scene of the delivery of the grant, which his interest in the matter had so impressed on his memory, the *espediente* and *diseño* were some how or other present, and exhibited and read.

On the 17th June, 1857, three months after the deposition of Mesa, Maria Bernarda Duarte de Valencia was offered as a witness. She stated that she had sold her share of the claim, and had no longer any interest in it; that she knows the rancho of Buacochá was granted to her mother; that she had seen the documents, consisting of a title, informations, or reports, *and* the *espediente;* there was a map, also; had seen the map and concession, which were given by her brother Alvino to an agent—Casanueva; that the *grant* was made by Governor Pico, it appeared to her, in 1845; had seen the *concession* in the hands of her mother; that her mother had had provisional possession a year before the grant, which was in 1846, and that the family had held possession up to 1856, when the house was knocked down by squatters; that it was the map or *diseño* which had been given to Casanueva, and the concession, she thought, had been lost, *for the reason that it was not fastened to the espediente.* On her cross-examination she said *she had seen the grant at the house of Ygnacio Pacheco; that her mother lived with him;* that the grant had a *seal* to it, a printed heading, signed by the governor and by Matias Moreno; that it was for that vacant land at the rancho of Buacochá, *something like two leagues, more or less*—a *sobrante.* "I have searched for the paper," (said the witness,) "because my mother told me she had looked for it, (the grant,) and was sad because she could not find it; *she said it was lost when the Americans came*

to the country. My mother lived on the rancho at the time the Americans came here, and a little time after—about one year; then she went to live at the house of Ygnacio Pacheco."

These contradictory statements are all the evidence there is respecting the loss of the supposed grant. Neither Casanueva, nor Alvino, nor José Duarte, was examined; nor was any affidavit, concerning the loss, made by any party, interested or not, showing any proper search or inquiry for the alleged grant or *diseño.* The vague statement of Maria Bernarda in the affidavit filed by her in the Land Commission is controlled by her deposition, the material parts of which have just been quoted. It cannot be pretended that any foundation for the admission of secondary evidence was laid.

We proceed to consider the evidence of the three "official" witnesses respecting the execution and delivery of a grant.

Cayetano Arenas, Matias Moreno, and Pio Pico, were all examined.

Cayetano Arenas was a writer, he says, in the governor's office, and wrote grants when called upon by government secretaries to do so, *but he does not pretend that he wrote a grant in this case.* He mentions some of the preliminary steps which, according to the so-called *espediente* in this case, appear to have preceded the application to the governor; but in his cross-examination he admits that he had seen that *espediente* that morning; so that all his knowledge of them may be well accounted for by the examination made that very day. But he affects to have a very positive recollection that Secretary Matias Moreno

wrote a grant and sent it to Manuel Castro, the prefect, to be delivered to Maria Teodoro Peralta. The issuance of grants was a thing ordinary enough while Pio Pico was governor, and it therefore might seem strange that a mere copyist in his office should recollect that one grant, with which he had nothing to do, of which neither original nor rough draft existed to refresh his recollection. The witness anticipates that objection, and says that he knows of his own knowledge the papers were issued, *because it was a very unusual thing to issue grants to a woman.* Afterwards, in his cross-examination, he gives *another reason* for knowing about this grant of his own knowledge: *because it was one of the first grants made during the administration of Matias Moreno as secretary.* This was evidently borrowed from that secretary, who does not fail to give the *same reason* for his recollection of this important event in his official career.

As to the character and extent of the grant, this witness says that it was for a tract of land with a strange name, containing some league and a half or two leagues, and situated somewhere near San Rafael. That is all he knows as to the situation of the land. The name of the grant, he says afterwards, was Buacochá. He says, in his cross-examination, that the grant was sent by the public post to Monterey to the prefecture; that the secretary of the government sent it.

The examination-in-chief of José Matias Moreno was made *ex parte* on the 3d of May, 1856, and he was cross-examined on the 28th of May, 1859.

He says that he was secretary, and Pio Pico governor, in April, 1846, both residing mostly at Los

Angeles; he did not know Maria Teodora Peralta; remembers a grant to her of the sobrante Buacochá; that he wrote the grant in conformity with the governor's decretal order to that effect at the end of the *espediente;* can't state exactly its purport or contents; it was signed by Governor Pio Pico and by the witness as secretary, and after its execution he sent it by the usual post of public service to the grantee. By it the *sobrante* called Buacochá was granted to Maria Teodora Peralta; he had not seen the *espediente* till that day in the Land Commission; recognized it to be the same which was formerly in his office while secretary at Los Angeles, and the decretal order and the signature and the *rubrica* at the end of it to be in the hand of Pio Pico. On his cross-examination this witness admitted that the "P" in Pico's name at the foot of this order was a little different from that which he generally made; that it is a bad signature; that he believes it to be Pico's because he is positive the words were written by him. When asked if he ever saw him make such a signature, he says he never saw him make such a *rubrica;* thinks it not his; has no confidence in it; the *espediente*, he said and repeated, *always remained in the archives.*

Pio Pico, examined on the 9th of September, 1859, said the words of the order of February 18, 1846, were in his hand, and the signature and rubrica also, but that he had no recollection of the *fact of signing, nor when*, nor of a concession in conformity with it; that *espedientes remained in the archives;* nothing but the title was delivered to the grantees.

Such is the testimony offered in support of this claim. We deduce from it the following conclusions:

I. No grant was ever made.

II. The only papers presented come from private hands, and never were in the archives.

III. The order of February 18, 1846, signed by Pico, was falsely and fraudulently made after the conquest, and antedated.

IV. There is nothing to give a certain date to any of the other proceedings. Not having been found in the archives, where they should have been, they may all have been fabricated and antedated.

V. The evidence of possession is inconclusive and immaterial, in default of any permission from the government. It was a trespass on the domain, and raises no equities against the government.

Before proceeding to offer any observations in support of these propositions, we recall the question of jurisdiction. *No claim was presented in time;* and whatever may have been the rights which Maria Teodora Peralta left to her heirs, they failed to assert them under the act of March 3d, 1851. (Sec. 8, 13.) The lands are therefore to be deemed and considered as part of the public domain of the United States. The Commissioners had no authority, after this fatal delay, to permit this claim to be presented *under the guise of an amendment. There was nothing to amend.* There was no claimant. Without a claimant, there was no claim—there was no jurisdiction. There was no remedy in the Commission, nor in the courts. Congress alone could give jurisdiction over this claim, presented for the first time in 1855.

We return to the points we have made upon the merits.

First. No grant was ever made. If one had been made, the *espediente* would have remained in the archives. There is no trace of its ever having been there. There is no parol evidence to overcome this difficulty; no attempt even to explain it. The very witness who pretends to have been present at the delivery of the grant to Maria Teodora Peralta, and to have heard it read, declares in the same breath that he saw and heard read at the same time the various papers constituting the so-called *espediente.* The testimony of the daughter Maria Bernarda, in like manner, goes to show that these preliminary papers were in the hands of the mother. They are brought into court, in company with the petition of the deceased mother, from some private hands, and that petition represents them as the only papers ever executed. All these facts belie the statements of the witnesses, official or not, who say that a grant was executed. The deposition of the ex-prefect, Manuel Castro, in August, 1853, *when the idea of a grant had not been hatched,* neutralizes his deposition in January, 1855. Ygnacio Pacheco likewise, first alcalde of San Rafael for the last twenty years of Mexican rule—he who, according to his own story, inaugurated the proceedings of Maria Teodora, and put her in possession of the land—he with whom she lived when her daughter Maria Bernarda pretends to have seen the grant in her hands—this Ygnacio Pacheco cannot be supposed to have been ignorant of it, and to have been wholly silent about it in his deposition, if it had ever existed. *But his deposition*

preceded the new light, and he had not the hardihood, like Castro, to testify in favor of *both theories*.

We need not dwell longer upon this point, for the case of Romero *vs.* the United States, 1 Wallace, U. S. Sup. C't Rep., 721, and the cases referred to in it, p. 745, completely cover this case. See also, White *vs.* the United States, 1 Wallace, 660, 684; Pico *vs.* United States, 2 Wallace, 279, 282. As we said in our review of the testimony, there is no foundation laid for secondary evidence of the contents of the alleged grant. But if there were, the court would be at a loss to discover in the evidence what land was granted. *No two witnesses agree upon the extent of the grant.* Mesa says it was for a league and a half. Maria Bernarda says it was for something like two leagues. Cayetano Arenas says the grant was for some league and a half or two leagues.

Second and *Third.* That *the papers presented with the original petition came from private hands, is not and cannot be denied.* That they never were in the archives is to be presumed from their not being found there, and from the absence of all trace in the archives of their having ever been there; also from the law and usage, admitted even by the official witnesses for the claim, that *if once there, they would have remained there.* There is not a tittle of evidence nor an attempt to explain their removal from the archives if they had ever been there. This is more than enough to say on the second point.

The third point is intimately connected with it. If the papers had been in the hands of Pio Pico, and he had written upon them the pretended order of February 18, 1846, *at that date, they never would have left*

the archives. There was no reason why they *should*, and every reason why they *should not.* They were not sent out for any additional *informe*, or proceeding of any kind whatsoever; on the contrary, that order purports to accept them as satisfactory. On the same day there would have been written thereon the more formal order of concession, beginning with the words: "Vista la peticion," &c., and be signed by the governor in the official capacity which he then held. In the usual course of business the grant or *titulo* would have been written out and the rough draft of it annexed to the *espediente.* There should have been a *diseño* accompanying the petition for the land and referred to in it. All of this would have been found together in the archives, and the original grant or *titulo* alone would have gone forth to the grantee. Neither Arenas nor Moreno pretends that the *espediente* in this case, or in any case, was forwarded with the *titulo* to the grantee. Yet, if Mesa is to be believed, there it was in her hands when the second alcalde, Murphy, brings her the grant. Apart from any evidence found in the character of Pico's signature, it is clear that the story of the forwarding of these papers to Pio Pico in 1846, and the immediate return of them to the petitioner, with that order of February 18, 1846, upon them, is too gross a departure from the natural and ordinary course of proceeding to be admitted without explanation.

The district judge, in his opinion, discredits this signature; says it has a suspicious appearance; that there is no means of knowing *when* it was put there.

In the case of Luco & al. *vs.* The United States, (23 How., 541,) photographic copies of numerous sig-

natures of Pico, found in the archives, were submitted to this court; and among those which were departures from his uniform signature to official documents this signature to this order, in case 648 before the Land Commission, was given. In Judge Hoffman's opinion in that case of Luco (Hoffman's Rep., p. 356–7) it is mentioned.

If this case had been prepared in the same way, this court would have had proof "from evidence *oculis subjecta fidelibus*," as in the case of Luco, that Pico's signature to this order was not such as he made with great uniformity at the time when this order bears date.

Fourth. There is nothing to fix with certainty the *date* either of Pico's order or of the writings produced by the parties, and constituting the so-called *espediente* in this case.

There is some reason, we think, to suppose *the whole of these papers to have been made after the American invasion.* Maria Bernarda, in her affidavit, says her father, Mariano Duarte, died in 1847 or 1848. If he had been living when these papers were made, his wife would *not* have been styled in them simply *Maria Teodora Peralta*, but Maria Teodora Peralta *de Duarte*, just as her daughter, Maria Bernarda, in her affidavit, calls herself Duarte *de Valencia.* It is probable that, while the Mexican government existed, there was no question of a *sobrante;* and if there was, that the Duarte family lived on *what was supposed to be private land*, with *the consent of the then owners.* On this point, see the testimony of Meza, printed Record, p. 21–22; and of M. B. D. de Valencia, ib. p. 25. This evidence fully accounts for the possession of the claimants, both

before and since the alleged grant, and destroys all equity which might be *supposed* to arise from an intended and imperfect grant.

But such possession, even under a provisional right of possession by authority of the Mexican government, constitutes no title nor any equity on which a claim can be founded against the United States. (See Garcia case, 22 Howard, U. S. R., 282, argued by Attorney General Black.)

When the change of government took place, and the new population manifested its disposition to confine the grantees of the former dominion within their strict limits, the idea of securing this land to the family of Duarte presented itself. This was, doubtless, *after the death of Duarte*, and possibly after that of Maria Teodora, his widow. The *signatures* on the papers which are produced may all be *genuine* and the *dates all false*. The Supreme Court, in the case of the United States *vs.* Neleigh, (1 Black's Rep., 306,) says: "It is a historical fact, and proved by satisfactory evidence more than once, that after that country passed into the possession of the United States the late governor was very liberal in executing grants to any persons who desired them, and for any quantity of land. It was easy to prove his *signatures*, and Pio Pico himself, when called as a witness, could never recollect any thing about *the date*, which was the only material question in the inquiry as to its validity. Of the last two secretaries who attested these grants, one has been found capable not only of writing false grants, but of supporting them by his oath. Of the other we have been compelled to say that he was fol-

lowing in the footsteps of his predecessor." Pico and his secretary figure in like manner in this case.

Fifth. The opinion of the district judge disposes of the equitable claim set up by the claimants grounded on their possession and improvements. We refer to his reasoning on that point. We question, however, the veracity of the witnesses who have spoken of *their possession.* Ygnacio Pacheco says that Maria Teodora Peralta lived on the land with her family from 1843 or 1844 till her death. Maria Bernarda says her mother was living with Ygnacio Pacheco in 1846 or 1847, when, the daughter says, she saw the grant in her hands. Afterwards this witness says: "My mother lived on the rancho *at the time the Americans came here,* and a *little time after—about one year;* then she went to live at the house of Ygnacio Pacheco."

We question the good faith of this claim from beginning to end, and believe the whole of it to have been *fabricated* after the change of dominion.

Or, if the court should find, as we think it must, that it was not presented in time, and is not, therefore, subject to the jurisdiction of the court, there will be little occasion for wasting labor on the case.

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